APPENDIX
VOLUME I

Supreme Court of the United States

OCTOBER TERM, 1967

No. 800

WORLD AIRWAYS, INC., ET AL., *Petitioners,*

v.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC. and AMERICAN AIRLINES, INC., *Respondents.*

No. 946

CIVIL AERONAUTICS BOARD, *Petitioner,*

v.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC. and AMERICAN AIRLINES, INC., *Respondents.*

No. 969

AMERICAN SOCIETY OF TRAVEL AGENTS, INC., *Petitioner,*

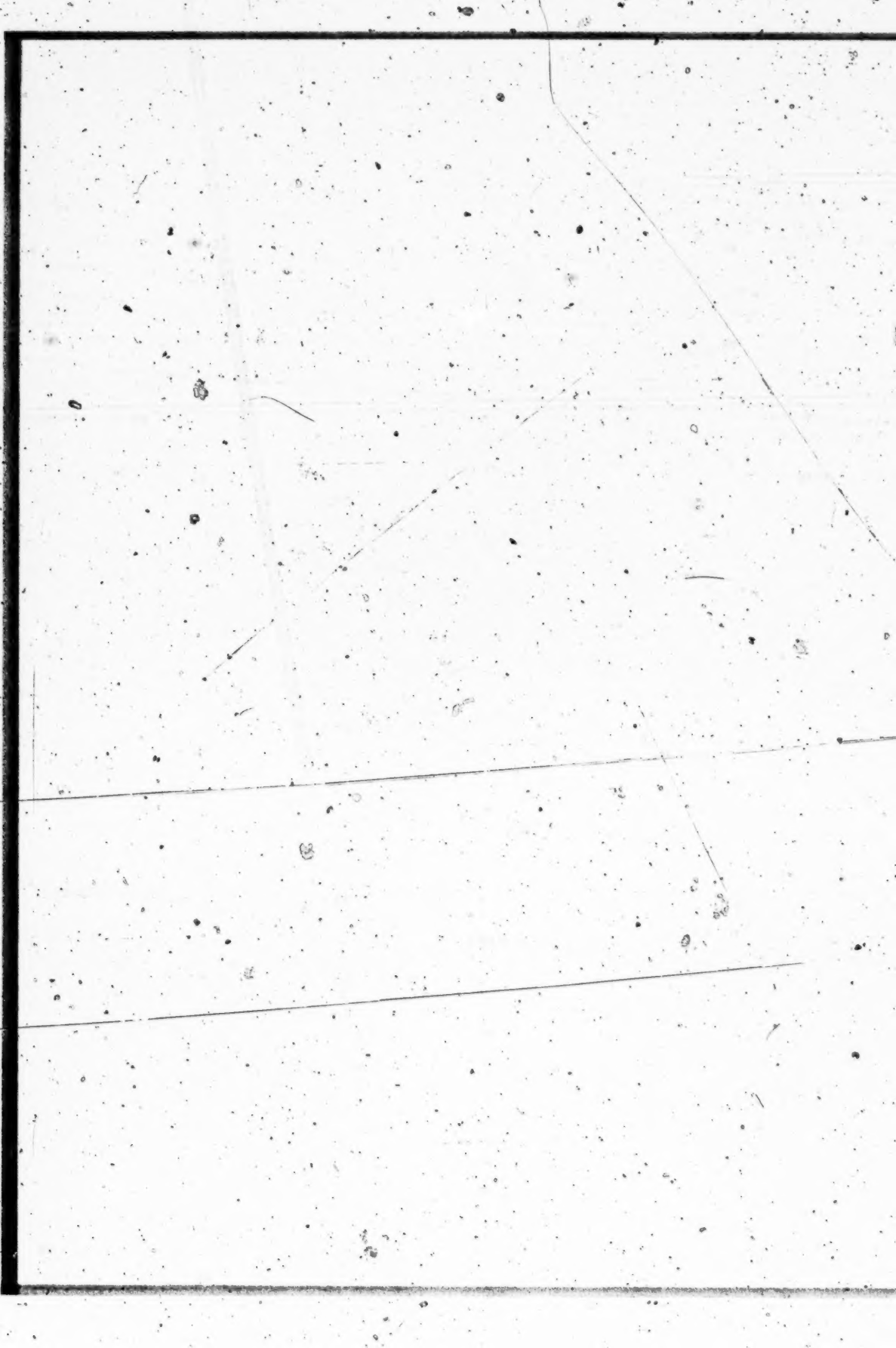
v.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC. and AMERICAN AIRLINES, INC., *Respondents.*

ON PETITIONS FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petition For Certiorari Filed In No. 800, November 7, 1967
Petition For Certiorari Filed In No. 946, December 22, 1967
Petition For Certiorari Filed In No. 969, December 28, 1967

Certiorari granted and consolidated January 29, 1968



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I. At Civil Aeronautics Board

A. *Transatlantic Charter Investigation,* Docket 11908 et al.

1. Order of Investigation and Consolidation, E-16023, dated November 14, 1960.
2. Supplemental Order of Investigation and Consolidation, E-17190, dated July 8, 1961.
3. Order No. E-17607, dated October 18, 1961.
4. Recommended Decision of Examiner, dated September 21, 1962.
5. Orders Nos. E-20530 and E-20531, dated October 8, 1963 and Supplemental Orders Nos. E-20530 and E-20531, dated March 3, 1964.
6. Order No. E-20776, dated April 30, 1964.

B. *Supplemental Air Service Proceeding,* Docket 13795 et al.

1. Order on Procedure, E-20573, March 13, 1964.
2. Recommended Decision of Examiner (covering domestic, overseas and foreign issues), August 27, 1965.
3. Opinion (covering domestic issues only), E-23350, March 11, 1966.
4. Supplemental Opinion and Order on Reconsideration (covering domestic issues only), E-23600, April 29, 1966.
5. Opinion (covering overseas and foreign issues), E-24237, approved by the President, September 27, 1966.
6. Order (adopting amendments to Parts 208 and 378 of the Board's Regulations), E-24238, effective November 26, 1966.

7. Order Denying Reconsideration (covering overseas and foreign issues), E-24431, November 22, 1966.

8. Reg. No. ER-478, dated November 22, 1966.

9. Reg. No. ER-479, dated November 22, 1966.

C. *Reopened Transatlantic Charter Investigation,* Docket 11908 et al.

1. Order No. E-20776, dated April 30, 1964.

2. Recommended Decision of Examiner, dated October 8, 1964.

3. Order (reopening Investigation for additional applicants), E-21966, March 30, 1965.

4. Order (adding All-Expense Tour issue), E-22686, September 23, 1965.

5. Recommended Decision of Examiner, December 22, 1965.

6. Opinion (All-Expense Tour Phase, amending authority of Capitol and Saturn), E-24240, approved by the President, September 27, 1966.

7. Opinion (adopting amendments to Parts 295 and 378 of the Board's Regulations), E-24241, effective November 26, 1966.

8. Opinion (issuing certificates to four additional carriers), E-24242, approved by the President, September 27, 1966.

II. At the United States Court of Appeals for the Second Circuit, Nos. 30947-8.

1. Petition for Review, November 25, 1966.

2. Argument Heard, June 15, 1967.

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7. Filed Orders Denying Petitions for Rehearing, September 29, 1967.
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9. Filed Orders Denying Petition for Rehearing en banc, September 29, 1967.
10. Filed Motions to Stay Issuance of Mandate, October 4, 1967.
11. Filed Order Granting Stay of Issuance of Mandate under Rule 28(c), October 13, 1967.
12. Filed Notice of Filing of Petition of Writ of Certiorari (World Airways, et al.), November 11, 1967.
13. Filed Notice of Filing of Petition for Writ of Certiorari (CAB), December 26, 1967.
14. Filed Notice of Filing of Petition for Writ of Certiorari (American Society of Travel Agents), December 29, 1967.
15. Filed Certified Copy of Order of Supreme Court Granting Petition for Writ of Certiorari (World Airways et al., CAB, American Society of Travel Agents), February 6, 1968.

(115, 117)

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UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

SUPPLEMENTAL AIR SERVICE

Docket 13795 *et al.*

NOTICE

Notice is hereby given that the Civil Aeronautics Board has decided to move forward with the processing of the applications listed below which seek certificates of public convenience and necessity authorizing supplemental air transportation under section 401(d)(3) of the Federal Aviation Act of 1958, as amended:

* * * * * *

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In order to facilitate and expedite the Board's determination of the scope of the proceeding, the issues therein, and the manner in which the proceeding will be processed, parties are instructed to submit on or before August 5, 1963, written expressions of their views on these questions.

* * * * *

(304)

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Order No. E-20573

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Served MAR 13 1964

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 13th day of March, 1964

SUPPLEMENTAL AIR SERVICE

Docket 13795 *et al.*

ORDER ON PROCEDURE

By Notice of July 12, 1963, from the Chief Examiner, the Board announced its intention to move forward with the processing of some 55 applications listed in the Notice which appeared to seek certificates of public convenience and necessity authorizing supplemental air transportation under section 401(d)(3) of the Act. All interested persons were offered an opportunity to express their views on such matters as the scope of the proceeding, the issues therein, and the manner in which the proceeding should be processed, and to comment on the suggestions made by others.

Numerous motions, suggestions, and comments have been received.[1] The Board has carefully considered all docu-

[1] Applicants filing motions were AAXICO Airlines, Inc., American Flyers Airline Corp. and Capitol Airways, Inc., California Air Charter, Inc. and Richard D. Neumann, Coral Airlines, East Coast

ments filed and is taking this opportunity to set forth its conclusions with respect to procedural matters to the extent that such action is appropriate at this time.

A matter of paramount importance is the establishment of the issues to be tried in the proceeding. The applications noticed for hearing raise a multitude of questions

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apart from requests for certification to provide supplemental air transportation services. Some involve issues solely in terms of conventional route-type certificates; a few request interim operating authority under Public Law 87-528; others specifically or implicitly seek individually ticketed and individually waybilled authority for the transportation of persons and property; and still others request authority cast in terms of "charter" and "non-scheduled" air transportation, air transportation "on a charter basis", or similar variants from the statutory definition of supplemental air transportation.[2]

Flying Service, Inc., Edde Airlines, Inc., Johnson Flying Service, Inc., Modern Air Transport, Inc., Overseas National Airways, Inc., Purdue Aeronautics Corp., Saturn Airways, Inc., Sourdough Air Transport, Inc., Southern Air Transport, Inc., Standard Airways, Inc., Trans International Airlines, U. S. Overseas Airlines, Inc., World Airways, Inc., and Zantop Air Transport, Inc. Motions or statements were filed on behalf of the 11 certificated route carriers, Bureau of Economic Regulation, Bonanza Air Lines, Inc., Lake Central Airlines, Inc., Pan American-Grace Airways, Inc., and Seaboard World Airlines, Inc. Answers were submitted by the 11 certificated route carriers, Bureau of Economic Regulation, Capitol Airways, Inc. and American Flyers Airline Corp., Modern Air Transport, Inc., Richard D. Neumann, Overseas National Airways, Inc., Saturn Airways, Inc., and Southern Air Transport, Inc.

[2] Section 401(d)(3) of the Act authorizing the issuance of certificates for supplemental air transportation provides as follows:

"(3) In the case of an application for a certificate to engage in supplemental air transportation, the Board may issue a

(305, 306)

As indicated initially, the Board's purpose in causing issuance of the Notice was to consider such applications as request authority to engage in supplemental air transportation within the meaning of the Act. We adhere to that determination, and we will consolidate the noticed applications herein only insofar as the relief they seek comports with the statutory definition. Were the Board also to permit litigation of the host of extraneous questions of the type outlined, the basic function and utility of this proceeding effectively would be destroyed and there would be substituted in its place a proceeding of clearly unmanageable proportions. Because of the extremely broad nature and scope of many of the applications, a precise severance of

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particular applications or portions thereof is for the most part impracticable.[3] All applicants are placed on notice

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certificate, to any applicant not holding a certificate under paragraph (1) or (2) of this subsection, authorizing the whole or any part thereof, and for such periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform the transportation covered by the application and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this Act."

"Supplemental air transportation" is in turn defined in section 101(33) of the Act to mean "charter trips in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this Act to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d)(1) and (2) of this Act."

[3] Some applications are, however, clearly subject to severance. Included in this category are the applications of Edde in Docket

that to the extent they intended by their applications under consideration to seek authority not falling within the scope of supplemental air transportation, it will be incumbent upon them to file new applications which will take their regular place on the Board's docket.

With the proceeding restricted in this manner, the ultimate issues to be determined are those posed by section 401(d)(3). These issues are (1) whether the public convenience and necessity require the supplemental air transportation requested by the applications; (2) whether the applicants are fit, willing, and able properly to perform the transportation covered by their applications and to conform to the provisions of the Act and the rules, regulations, and requirements of the Board thereunder; and (3) what limitations, if any, should be imposed by the Board to assure that the service rendered pursuant to any certificate to be issued will be limited to supplemental air transportation as defined in the Act. Since the authority of supplemental air carriers to engage in operations for the military is now contained in their currently effective

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14044 and World in Dockets 14529 and 14530, which in substance seek certification under other provisions of section 401(d).

The applications of World Wide in Dockets 13915 and 13916 are interim applications which were denied by the Board, with the qualification that action upon the request for reconsideration of the denial of interim authority would be held in abeyance pending an expedited hearing on the fitness issues involved in the carrier's applications for permanent certification. Order E-19009, dated November 14, 1962. The carrier did not avail itself of the opportunity afforded. Since we are not here considering further requests for interim authority and the basis for the deferment in Order E-19009 no longer exists, the applications will be finally denied.

We find no persuasive basis for severance and separate consideration of the applications of Purdue in Dockets 13798 and 13799 as requested by Lake Central, and therefore the carrier's motion seeking this relief will be denied.

(305, 306)

As indicated initially, the Board's purpose in causing issuance of the Notice was to consider such applications as request authority to engage in supplemental air transportation within the meaning of the Act. We adhere to that determination, and we will consolidate the noticed applications herein only insofar as the relief they seek comports with the statutory definition. Were the Board also to permit litigation of the host of extraneous questions of the type outlined, the basic function and utility of this proceeding effectively would be destroyed and there would be substituted in its place a proceeding of clearly unmanageable proportions. Because of the extremely broad nature and scope of many of the applications, a precise severance of

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interim certificates, also pertinent is the question of the extent to which any of the applicants should be certificated to provide air transportation services for the Department of Defense. Subsidiary issues within this broad general framework may well be desirable. These are, however, matters best left for formulation and resolution by the examiner as a result of the prehearing conference or in some other appropriate manner.

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In view of the breadth of the authority requested, the complexity of the questions involved, and the number of applicants seeking authorizations, the determination of the best means of processing the applications is a particularly difficult one. On this question the filings of the parties reveal a wide divergence of views.

A few applicants desire separate hearings on their individual applications. Most recognize that some form of consolidated hearings is both necessary and desirable but differ markedly on the procedures to be followed. As far as geographic area is concerned, some applicants desire that all applications be heard together so that the issues will be world-wide in scope; others suggest separate proceedings to be conducted successively, the first dealing with overseas and foreign authority and the second with domestic issues; and still others would divide the proceeding into three or more geographic areas for separate consideration. A similar diversity of opinion exists on whether the questions of public convenience and necessity and the fitness of the individual applicants should be heard together or separately, and if separately, which should precede the other. Also, there are suggestions to the effect that this proceeding be limited to applicants who now hold

interim operating authority as supplemental air carriers and that all other applications be set for separate hearing and disposition.

After giving due weight to all of the views expressed, we have concluded that the public interest would best be served by hearing all applications on both public convenience and necessity and fitness questions in a single consolidated proceeding. If the applications were compartmentalized for separate consideration in terms of such matters as issues, geographic scope, and type of applicant, some benefits would be achieved, particularly from the standpoint of narrowing the questions to be resolved at any one time. However, these applications raise common and interrelated problems which in many respects transcend geographical divisions and can best be treated in broad perspective. All things considered, the single proceeding conducted with all issues present offers the procedural vehicle most likely to provide for a comprehensive and cohesive review of the future role of the supplemental air transportation industry, which is our primary task.

We consider it likely that the area approach would increase the total time necessary to process the applications. Moreover, the division of the applications on an area basis would require multiple participation by at least a majority of the applicants in two or more separate proceedings, since virtually all of them seek overseas and foreign as well as interstate authority, and this procedure might thus constitute a substantial drain on their energies and resources. From the standpoint of most of the applicants, the single proceeding in which all applications are heard would appear to provide the least costly and burdensome procedure.

As so constituted, the proceeding will encompass all applications to the extent that they request authority to engage in interstate, overseas, and foreign supplemental air transportation.[4] We are not persuaded that anything is to be gained here by segregating public convenience and necessity and fitness issues for separate hearing and decision. On the contrary, in the circumstances of the present proceeding, we believe that the Board would benefit from the ability to assess public convenience and necessity in the light of data concerning the operating plans, financial status, and other attributes of the fitness of particular applicants. Nor do we find any sound basis for excluding from participation in this proceeding any of the three categories of applicants desiring supplemental air transportation authorizations—new applicants, applicants holding interim authority, and those denied interim authority. Except to the extent that particular applicants may be affected by the outcome of pending cases, it would appear that all should be entitled to prosecute their applications herein.[5]

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[4] As urged by some of the parties, we will not, however, consider herein issues related to civil passenger charter authority in the transatlantic area. Such issues are under consideration in the *Transatlantic Charter Investigation*, Docket 11908 *et al.*; and no reason is apparent to relitigate them in this proceeding. The Board's decision in the *Charter Investigation* was served on March 3, 1964 (Orders E-20530 and 20531).

[5] By Order E-19009, dated November 14, 1962, the Board, among other things, set the 401(d)(3) applications of the following carriers for hearing, with the direction that the question of fitness, willingness, and ability be heard and decided before any remaining issues: Air Cargo Express, Inc. (ACE), d/b/a Columbia Airlines (Dockets 13894 and 13895); Airline Transport Carriers, Inc., d/b/a California-Hawaiian Airlines (13884 and 13885); Blatz Airlines, Inc. (13871 and 13872); Paramount Airlines, Inc. (13897 and 13990); Quaker City Airways, Inc. d/b/a Admiral Airways,

Several of the parties have suggested that once the Board has set the scope of this proceeding and acted upon related procedural questions, further procedural steps should

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be held in abeyance until after final decision in the *Transatlantic Charter Investigation,* Docket 11908 *et al.* and in the rulemaking proceeding in Docket 14148.[6] The proponents point out that at issue in the *Charter Investigation* are questions such as market size, liberalization of the charter rules, and whether the applicants therein will be treated as a class, all of which could have a bearing on the future course of this proceeding. Further, the possible amendments to Part 207 involved in Docket 14148 might have a major effect on the size of the charter market realistically available to the supplemental air carriers. It is asserted that for these reasons the deferment suggested would permit the development of a more meaningful record.

Inc. (13877 and 13878); and World Wide Airlines, Inc. (13904 and 13905). Subsequently, Airline Transport Carriers, Blatz and Paramount were found unfit for permanent certification and their applications were therefore denied in their entirety (Orders E-20227 and 20228, served December 3, 1963, E-20474 and E-20475, served February 14, 1964, and E-20263 and E-20264, served December 16, 1963); and prehearing conferences on the ACE and World Wide applications were indefinitely postponed at the request of the applicants, while further procedural steps with respect to Admiral were postponed pending Board decision in the *Paramount* case. If the latter three carriers desire to further prosecute their applications, it will be incumbent upon them to make that desire known by an appropriate filing within the period allowed for requesting reconsideration of this order, after which the Board will prescribe the appropriate further procedures.

[6] Docket 14148 is concerned with revisions in Part 207 of the Economic Regulations which may be necessary or desirable as the result of section 3 of Public Law 87-528, which amended section 401(e) of the Act so as to grant certificated all-cargo route carriers the statutory right to engage in passenger charters subject to regulations prescribed by the Board.

While there is substantial merit to this suggestion, there are countervailing factors to be considered. Since the Board's decision in the *Charter Investigation* has been issued, any pertinent principles to be gleaned from that proceeding are now available subject, of course, to the normal procedures with respect to petitions for reconsideration. The time of final decision in Docket 14148 is presently undetermined, and awaiting its final outcome could mean a substantial further delay in the process of hearing and deciding the present applications—a process which, under the most favorable conditions, will be protracted. Moreover, while the decisions rendered in the *Charter Investigation* and Docket 14148 may be useful in the conduct of this proceeding, they can serve only as guides and will not preclude the applicants herein from contending for the use of different rules, standards and concepts in the disposition of their applications. In addition, we cannot overlook the distinct element of public interest in avoiding unnecessary delay in disposing of the applications of carriers who have long sought the stability which would flow from permanent status. Balancing all of these considerations, we believe the better course is to move forward with this proceeding at this time.

Included in some of the filings are requests that the Board establish ground rules for the trial of this proceeding on a variety of questions, such as the scope of new authorizations that might be granted, the standards of fitness to be applied, and the type of limitations that might be imposed to assure that operations are truly supplemental in nature. These questions go beyond considerations of procedure and involve matters of substance which the Board should not undertake to decide in advance of development and evaluation of the record.

For example, the scope of permissible operations will be governed in large measure by the meaning ascribed "character", a term undefined in the Act. As in the case of the *Transatlantic Charter Investigation,* the parties herein will be free to urge their own constructions of the term as it should be applied to any awards for supplemental air transportation. Similarly, in the *Large Irregular Air Carrier Investigation,* the Board made its views known in some detail on considerations affecting fitness. The question of whether and to what extent the standards heretofore applied must or should be changed or modified in the light of the Court's decision in the *United* case[1] and the enactment of Public Law 87-528 is a matter to be litigated in this proceeding.

In the course of processing the applications for interim operating authority pursuant to Public Law 87-528, the Board reviewed, insofar as pertinent here, the fitness of some 23 carriers, granting interim authority to 15 carriers and denying it to the remaining 8. The Bureau of Economic Regulation (Bureau) proposes that, as to the scope of the fitness issues in the present proceeding, the Board's decisions on the interim applications should "as a matter of policy be deemed *res judicata*" with respect to events which occurred prior to the interim proceedings. In view of the fact that those decisions were related to the grant of interim authorizations and were not based on a hearing record, we are not prepared to treat the interim decisions as *res judicata.*

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[1] *United Air Lines, Inc.* v. *C. A. B.,* 278 F. 2d 446 (1960), vacated *sub nom. All American Airways, et al.* v. *United Air Lines, et al.,* 364 U.S. 297 (1960).

(310, 311)

A petition for leave to intervene has been filed on behalf of 11 certificated route carriers,[8] and the petition is opposed by Modern, Saturn, and World. Modern asserts that no facts or circumstances have been demonstrated which warrant intervention, particularly since petitioners are not themselves engaged in supplemental air transportation. Saturn takes the position that intervention by these carriers should be limited to specific areas in which they have a legitimate interest. World charges that the petitioners have entered into a conspiracy to drive the supplemental air carriers out of business, and that in furtherance of that conspiracy they have entered into various agreements subject to section 412 of the Act which have not been filed with

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the Board for approval. World concludes that intervention should be denied on the grounds that petitioners "are law violators and come into this case with unclean hands and the real purpose of said carriers is to monopolize air transportation."

We find that petitioners have sufficient competitive interest to warrant intervention and that their participation may reasonably be expected to assist in the development of a sound record. Petitioners possess extensive authority to provide charter services without regard to the points named in their certificates. For the most part, the applications herein are equally broad in scope, so that limiting petitioners' participation to specific areas is not practicable. However, we expect petitioners to utilize joint pres-

[8] American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc.

entations and joint representation to the maximum extent deemed feasible by the examiner, and the use of multiple counsel is to be avoided. These steps will go far in simplifying the record and expediting the conduct of the proceeding.[9]

The contentions of World are without merit. No facts are set forth in support of the carrier's allegations, and if such facts exist, there are ample procedures available by which World may seek to have them brought on in appropriate fashion for consideration by the Board. Unsupported charges of this nature, however, provide no sound basis for withholding intervention.

On the matter of intervention, we note that while the American *et al.* and Flying Tiger petitions are directed to the consolidated proceeding, other carriers and persons previously have filed petitions for leave to intervene with respect to many of the individual applications being consolidated herein. All such persons are placed on notice that if they desire to seek leave to intervene in this proceeding as now constituted, it will be necessary for them to file new petitions within the time limits prescribed by the Board's Rules of Practice.

One further procedural matter requires comment. The applications here under consideration, which were responsive to amendments to the Act made by Public Law 87-528, have been on file for over a year, and by the notice process preceding the issuance of this order all interested persons have been given a full opportunity to comment upon the principal factors involved in establishing this proceeding. Under these circumstances, there is no necessity for pro-

[9] For similar reasons we will grant the petition for leave to intervene filed by The Flying Tiger Line Inc., which is opposed by Saturn.

viding an extensive further period for the filing of new applications, motions to consolidate, or other requests addressed to the issues. Our order will therefore provide an accelerated cutoff date for the filing of such documents, after which no such further filings will be entertained. The period for filing petitions for reconsideration of this order will be coextensive with the cutoff date thus established.

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All other motions and answers have been fully considered and have been found not to require comment or action by the Board.

ACCORDINGLY, IT IS ORDERED THAT:

1. The following applications be and they hereby are consolidated for hearing and decision in this proceeding to the extent that they request certificates of public convenience and necessity for supplemental air transportation pursuant to section 401(d)(3) of the Act: AAXICO Airlines, Inc., Dockets 13795 and 13796; American Flyers Airline Corp., Dockets 13860, 13861, and 13862; California Air Charter, Inc., Dockets 13886 and 13887; Capitol Airways, Inc., Dockets 13863, 13864, and 13865; Conner Air Lines, Inc., Dockets 13874 and 13875; Coral Airlines, Dockets 14372 and 14382; East Coast Flying Service, Inc., Docket 14464; Imperial Airlines, Inc., Dockets 13929 and 13930; Johnson Flying Service, Inc., Dockets 13867 and 13868; Marshfield Airways, Inc., Docket 14284; Modern Air Transport, Inc., Dockets 13857 and 13858; Overseas National Airways, Inc., Dockets 13881 and 13882; Purdue Aeronautics Corp., Dockets 13798 and 13799; Richard D. Neumann, Dockets 13888 and 13889; Saturn Airways, Inc., Dockets 13853 and 13854; Sourdough Air Transport, Inc.,

Dockets 13820 and 13821; Southern Air Transport, Inc., Dockets 13818 and 13819; Standard Airways, Inc., Dockets 13816 and 13817; Trans International Airlines, Dockets 13835 and 13836; Transocean Air Lines, Dockets 13921 and 13922; U. S. Overseas Airlines, Inc., Dockets 13906 and 13907; Vance Roberts, Dockets 13827 and 13828; World Airways, Inc., Dockets 13811 and 13812; and Zantop Air Transport, Inc., Dockets 13912 and 13913;

2. The following applications be and they hereby are severed from this proceeding: Edde Airlines, Inc., Docket 14044; World Airways, Inc., Dockets 14529 and 14530; and World Wide Airlines, Inc., Dockets 13904, 13905, 13915 and 13916;

3. Order E-19009, dated November 14, 1962, be and it hereby is vacated insofar as it deferred action on portions of the petition of World Wide for reconsideration of Order E-18877 and consolidated the petition, as deferred, with proceedings on the carrier's applications for certificates of public convenience and necessity in Dockets 13904 and 13905, and the said petition of World Wide for reconsideration of Order E-18877 and its applications in Dockets 13915 and 13916 be and they hereby are denied in their entirety;

4. Petitions for reconsideration of this order, motions to consolidate applications, and all other requests addressed to the issues shall be filed within twenty (20) days after the date of service of this order, and no further such petitions, motions, or requests filed thereafter will be entertained;

(313)

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5. Answers to the petitions, motions, and requests described in ordering paragraph 4 hereof shall be filed within ten (10) days after the expiration of the period provided for the filing of such petitions, motions, and requests;

6. The persons having applications listed in ordering paragraph 1 hereof be and they hereby are made parties to this proceeding;

7. The petitions for leave to intervene filed by the Flying Tiger Line Inc. and on behalf of American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc., be and they hereby are granted;

8. To the extent not granted herein, all motions and requests be and they hereby are denied;

9. This proceeding shall be set down before an examiner of the Board for further proceedings in conformity with the provisions of this order; and

10. This order shall be published in the Federal Register.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

633

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

SUPPLEMENTAL AIR SERVICE PROCEEDING

Docket 13795 *et al.*

REPORT OF PREHEARING CONFERENCE

Served: JUN 2 1964

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634

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CARRIER INTERVENORS:

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James Bell, Pogue & Neal, 1001 Connecticut Avenue, N. W., Washington, D. C. 20036, for Alaska Airlines, Inc. and the Trunkline Intervenors

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637

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This proceeding is concerned with applications seeking certificates of public convenience and necessity authorizing supplemental air transportation under Section 401(d)(3) of the Act. The scope of the proceeding, the ultimate issues, and other procedural matters were established by

(637, 639, 647)

the Board in Order E-20573, dated March 13, 1964.[1] As presently constituted, the case involves some 23 applicants and 47 applications.

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Issues.

The suggestions of the parties for specification of particular subsidiary issues within the broad framework of the ultimate issues stated by the Board in Order E-20573 were discussed extensively. The statement of issues previously circulated by the Bureau, as revised after discussion at the conference, was accepted for the purposes of this proceeding (Appendix A). The following matters of explanation, clarification, qualification, or addition should also be noted:

1. There is no issue in this proceeding concerning the award of authority to perform civil passenger charters in the transatlantic area.

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647

APPENDIX A TO REPORT OF PREHEARING CONFERENCE

STATEMENT OF ISSUES

The Board in Order E-20573, March 13, 1964, stated the ultimate issues to be determined in this proceeding to be as follows:

[1] See also Order E-20747, April 27, 1964.

(647, 649, 650)

1. Whether the public convenience and necessity require the supplemental air transportation requested by the applications;*

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649

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d. How should the term "charter", as related to supplemental service, be defined?

(1) Should the term "charter" include any one or more or a combination of the following:

(i) Traditional planeload charter.

(ii) Hire of aircraft by more than one charterer —Passenger and/or Cargo, Military and/or Civil.

(iii) All-Expense Tour Charter — By travel agents, hotels, resorts, or other persons.

(2) How should the types of charters indicated in item d. (1), (i), (ii), (iii) be defined and what terms, conditions, and limitations, if any, should be imposed on each if found to be required?

650

e. To what extent, if any, would the services applied for herein involve diversion of traffic from the scheduled carriers?

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* The awards of civil passenger charter authority in the transatlantic area is not in issue in this proceeding. Order E-20573, March 13, 1964 (p. 5).

(4108)

4108

HOLIDAY AIRWAYS, INC.

EXHIBIT HOL-T-4

TESTIMONY OF RICHARD D. NEUMANN

• • • As an example, a tour would leave Thursday, arriving Los Angeles early Thursday evening. The passenger stays overnight Thursday night, and departs for San Francisco Friday evening, arriving in San Francisco early evening. Arrangements will be made in both Los Angeles and San Francisco for entertainment and hotels. On Friday night the passenger would stay in San Francisco. On Saturday, they will be taken on a sightseeing tour throughout the San Francisco Area. On Saturday night, they would be taken on a tour of night spots and restaurants. Sunday morning the passenger would be free to attend the Church of his choice. He would return to Chicago Sunday evening. We would intend to price these tours at approximately $15.00 to $20.00 higher than the sum of the lowest local propeller or jet segment fares.

HOLIDAY AIRWAYS, INC., considers overseas and international all expense paid tours a considerably more lucrative market than the domestic tours, and therefore, would expend considerably more time and money on their promotion. • • •

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6065

WORLD AIRWAYS, INC.

WORLD EXHIBIT 300

	% Charter Revenue of Transport Revenue	
	Domestic	International & Territorial
1959	0.4	4.3
1960	0.5	2.7
1961	0.4	5.1
1962	0.6	5.1
1963	0.5	5.1

(Source: World Exhibits 304 and 305)

(6229)

6229

WORLD AIRWAYS EXHIBIT 1

(See opposite) ☞

Schedule of Statistics for Charter Operations
January 1, 1961 - December 31, 1963

Charter Category	Period Quarter Ended	No. of Charter Flights	Passenger No. of Pax.	Passenger Pax Miles (thousands)	Revenue
Civil Passenger:	March 31, 1961				
Interstate	"	3	274	512	$. 19,513
Overseas	"	5	450	1,096	83,646
Foreign	"	-	-	-	-
Civil Cargo:	"				
Interstate	"	-	-	-	-
Overseas	"	-(1)	-	-	-
Foreign	"	-	-	-	-
Military Passenger:	"				
Interstate	"	-	-	-	-
Overseas	"	-	-	-	-
Foreign	"	108	7,059	9,482	274,978
Military Cargo:	"				
Interstate	"	360	-	-	-
Overseas	"	-	-	-	-
Foreign	"	5	-	-	-
Total Quarter		481	7,783	11,090	$ 378,137
Civil Passenger:	June 30, 1961				
Interstate	"	17	1,530	4,662	$ 123,084
Overseas	"	13	1,170	3,555	284,338
Foreign	"	-	-	-	-
Civil Cargo:	"				
Interstate	"	-	-	-	-
Overseas	"	-(1)	-	-	-
Foreign	"	-	-	-	-

Schedule of Statistics for Charter Operations
January 1, 1961 - December 31, 1963

Form D

Charter Category	Period Quarter Ended	No. of Charter Flights	Passenger			Cargo		
			No. of Pax.	Pax Miles (thousands)	Revenue	Tons	Ton Miles (thousands)	Revenue
Civil Passenger:	March 31, 1961							
Interstate	"	3	274	512	$ 19,513	-	-	$ -
Overseas	"	5	450	1,096	83,646	-	-	-
Foreign	"	-	-	-	-	-	-	-
Civil Cargo:	"							
Interstate	"	-	-	-	-	-	-	-
Overseas	"	-(1)	-	-	-	960	56	-(1)
Foreign	"	-	-	-	-	-	-	-
Military Passenger:	"							
Interstate	"	-	-	-	-	-	-	-
Overseas	"	-	-	-	-	-	-	-
Foreign	"	108	7,059	9,482	274,978	-	-	-
Military Cargo:	"							
Interstate	"	360	-	-	-	3,285	8,373	1,664,079
Overseas	"	-	-	-	-	-	-	-
Foreign	"	5	-	-	-	110	1,516	155,324
Total Quarter		481	7,783	11,090	$ 378,137	4,355	9,945	$1,819,403
Civil Passenger:	June 30, 1961							
Interstate	"	17	1,530	4,662	$ 123,084	-	-	$ -
Overseas	"	13	1,170	3,555	284,338	-	-	-
Foreign	"	-	-	-	-	-	-	-
Civil Cargo:	"							
Interstate	"	-	-	-	-	-	-	-
Overseas	"	-(1)	-	-	-	577	180	-(1)
Foreign	"	-	-	-	-	-	-	-

(6414)

6414

WORLD AIRWAYS EXHIBIT W-5

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In its forecast of U. S. domestic traffic (including overseas and territorial traffic), the authors felt that traffic is reaching maturity. "Opportunities for substantial fare reductions do not seem great." This highlights the continuing need to bring more Americans into the air travel market by lower fares made possible via charters.

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With respect to the Pacific, the forecast "is based on an anticipated high order of growth in both business and pleasure travel and, again, on a gradual decrease in fares. Business travel should be stimulated greatly by the dynamic growth expected in Japan and Australia. Tourist travel will increase as hotels, restaurants, and other tourist facilities are brought to higher standards. The Pacific area is offering the tourist an increasingly popular alternative to Europe and consequently is becoming a steadily increasing travel market. The annual traffic growth rates underlying this forecast vary from just under 20 percent in the early 1960's to about 9 percent by the end of the forecast period."

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What Travellers Say About Pacific Area Tourism.

A later survey (November 1963) conducted by PATA[3] of travelers known to have toured the Pacific area indicated that 63.2% traveled for pleasure only, 16.1% for a combination of business and pleasure, 15% for business, 5.7% for personal and other reasons.

The (weighted) average trip length was 67.7 days for pleasure travel, 61.1 days for business. Less than a quarter of the pleasure travelers reported trips of less than 40 days, whereas slightly more than half the business travelers indicated that their last trip fell into this category. (The modal group of pleasure travelers [= 34% of total] required 41-60 days; that of business travelers [= 36.5%] took 21 to 40 days.)

The pleasure traveler visited 6.1 areas, on the average, compared with 4.1 for the business traveler. Most visits took 2 to 5 days each, although Japan generally required over 6 days.

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Many of the respondents (¼) were taking the Pacific trip as a vacation and had also spent their prior vacation on a Pacific trip or on a vacation within the U.S. (Cali-

[3] 71% of those sampled had used air travel. 51% of the Pacific trips took place in 1963; 82% in 1962 or 1963. Returns constituted 24.9% of the mail-out. "Only persons who indicated their last trip was beyond Hawaii were included among the tabulations". The survey was conducted in conjunction with *Holiday* magazine.

fornia or Florida primarily) or in Europe. As a group they had considerable time at their disposal for vacation (7 or 8 weeks—those on business trips to the Pacific areas took 4 weeks). This implies that Pacific travel is limited to those with lots of time and corresponding means. Consideration must, however, be given to the fact that there is desire to have the time spent commensurate with the cost, especially the cost of transportation. The lower the cost of transportation, the less time one feels one has to be abroad to "get your money's worth". The lower cost of inclusive tours opens up a market among those with less time for vacations as well as less means to pay for them.

6419

57% of all pleasure travelers reported they had bought a pre-arranged tour, of whom 44% replied that they traveled as members of an organized group, 52% traveled on an individual basis. (4% did not reply) 47% of the pleasure travelers who purchased pre-arranged tours were members of a party of two. The average number in all parties was 3.5 persons.

6622

BUREAU OF ECONOMIC REGULATION

EXHIBIT BER INDEX

INDEX

EXHIBIT NO.	DESCRIPTION
A	Bureau's Designation of Areas.
100	Civil Passenger Charters—Summary by Area, 1961-1963
101	Civil Interstate Passenger Charters—Supplemental Carriers
102	Civil Interstate Passengers Charters—Scheduled Carriers
103-A	Civil Overseas Passenger Charters—Supplemental Carriers Latin America and Caribbean
103-B	Civil Overseas Passenger Charters—Supplemental Carriers Transpacific
104-A	Civil Overseas Passenger Charters—Scheduled Carriers Latin America and Caribbean
105-A	Civil Foreign Passenger Charters—Supplemental Carriers Latin America and Caribbean
105-B	Civil Foreign Passenger Charters—Supplemental Carriers Transpacific
105-C	Civil Foreign Passenger Charters—Supplemental Carriers North America

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EXHIBIT NO.	DESCRIPTION
106-A	Civil Foreign Passenger Charters—Scheduled Carriers Latin America and Caribbean
106-B	Civil Foreign Passenger Charters—Scheduled Carriers Transpacific
106-C	Civil Foreign Passenger Charters—Scheduled Carriers North America
200	Civil Cargo Charters—Summary by Area, 1961-1963
201	Civil Interstate Cargo Charters—Supplemental Carriers
202	Civil Interstate Cargo Charters—Scheduled Carriers
203-A	Civil Overseas Cargo Charters—Supplemental Carriers Latin America and Caribbean
203-B	Civil Overseas Cargo Charters—Supplemental Carriers Transpacific
204-A	Civil Overseas Cargo Charters—Scheduled Carriers Latin America and Caribbean
204-B	Civil Overseas Cargo Charters—Scheduled Carriers Transpacific
205-A	Civil Foreign Cargo Charters—Supplemental Carriers Latin America and Caribbean
205-B	Civil Foreign Cargo Charters—Supplemental Carriers Transpacific

RELATIONSHIP OF TRAVEL AGENCY PASSENGER SALES TO PASSENGER REVENUE[1]/

JOINT INTERVENORS - DOMESTIC OPERATIONS[2]/
YEAR 1962

Response to Request of AAXICO, Purdue and World (Prehearing Conference Report, Appendix C, page 6, item II. A.3).

Volume of passenger and cargo business sold by agents during each of the last 8 calendar quarters, showing percentage this represents of total business.

Carrier	Year Ending December 31, 1962 First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Annual Total
Passenger Sales By Travel Agents ($000)					
American 5/	20,313	24,198	23,791	23,429	91,731
Braniff	2,795	3,333	3,248	3,294	12,670
Continental	2,802	3,349	3,518	3,866	13,535
Delta	10,149	10,104	11,525	10,532	42,310
Eastern 3/	26,947	23,310	3,313	18,269	71,839
National	6,660	6,241	7,602	6,539	27,042
Northwest	4,179	5,539	6,226	4,348	20,292
Trans World	15,039	18,504	18,511	18,420	70,474
United 4/	32,366	44,244	47,121	39,807	163,538
Western 5/	4,930	6,304	6,140	6,079	23,453
Total	126,180	145,126	130,995	134,583	536,884
Total Passenger Revenues (Scheduled) ($000)[1]/					
American 5/	94,569	109,260	108,138	98,344	410,311
Braniff	18,591	19,412	19,446	18,455	75,905
Continental	14,521	14,660	15,972	15,505	60,658
Delta	41,179	43,495	50,639	43,029	178,342
Eastern 3/	79,588	69,195	15,249	59,423	223,455
National	22,091	21,334	27,019	20,971	91,415
Northwest	18,857	24,119	26,465	21,025	90,466
Trans World	61,315	66,153	73,988	69,357	270,814
United 4/	112,825	145,184	152,688	122,276	532,973
Western 5/	18,261	20,681	22,742	19,487	81,170
Total	481,797	533,493	512,346	487,872	2,015,509
Percentage - Agency Sales of Total Passenger Revenue					
American 5/	21.5	22.1	22.0	23.8	22.4
Braniff	15.1	17.2	16.7	17.8	16.7
Continental	19.3	22.8	22.0	24.9	22.3
Delta	24.6	23.2	22.8	24.5	23.7
Eastern 3/	33.9	33.7	21.7	30.7	32.1
National	30.1	29.3	28.1	31.2	29.6
Northwest	22.2	23.0	23.5	20.7	22.4
Trans World	24.5	28.0	25.0	26.6	26.0
United 4/	28.7	30.5	30.9	32.6	30.7
Western 5/	27.0	30.5	27.0	31.2	28.9
Total	26.2	27.2	25.6	27.6	26.6

See page 2 of this exhibit for footnotes.

(7386)

7386

JOINT EXHIBITS OF AMERICAN FLYERS AIRLINE, ET AL.

EXHIBIT NO. J-211

Almost half of all respondents reported that they had bought a pre-arranged tour for their Pacific journey. Naturally, pleasure travelers were more inclined to do so (56.8 per cent stated they had purchased such a tour), although 11.8 per cent of the business travelers reported that they also had bought a prearranged tour.

Of the 811 pleasure travelers who bought a pre-arranged tour, 43.9 per cent indicated that they had traveled as a member of an organized group and 52.2 per cent reported they had traveled on an individual basis. (No reply was received from 3.9 per cent.)

The average number of persons in a party travelling for pleasure on a pre-arranged tour was 3.5 persons. Distribution was:

Number of Persons in Immediate Party	Percentage of Pleasure Travelers Who Purchased Pre-Arranged Tours
1 Person	15.8%
2 Persons	46.7
3 Persons	5.1
4 Persons	6.0
5 Persons	1.5
More than 5 Persons	20.1
No reply	4.8
	100.0%

Source: Survey of Pacific Travelers, PATA/Holiday Magazine, December, 1963.

7788

JOINT INTERVENORS' EXHIBIT JI-1080

Narrative Statement: Promotion Of All-Expense Tours

The exhibits contained in Volume II relate to the development and promotion of all-expense tours in the international, overseas, Hawaiian and Alaskan markets by the scheduled carriers.

The "all-expense tour" is defined by industry agreement (e.g., IATA Resolution 810e, annexed hereto) as an advertised round or circle trip, arranged and promoted with tour literature, and paid for in full by the purchaser prior to commencement of the tour. The tour must also provide, for the total duration of the tour, sleeping or hotel accommodations, and may include other facilities or attractions such as transfers, sightseeing, motor coach trips, and car rentals. These ground features amount to not less than 20% of the air fare, or $15.00, whichever is the greater.

The all-expense tour may be purchased by an individual traveller, or by a group of people, travelling with or without an escort provided by the tour operator. In addition, the ground arrangements of such a tour also may be purchased by passengers on a bona fide charter.

A further requirement is that "the price for all such land arrangements shall be published in the tour literature or a rate sheet insert" so that the passenger can establish what he is getting for his money in air transportation and ground arrangements and thereby has an opportunity of comparing the value of one tour package against another.

(7788, 7789)

I. *The Manner In Which All-Expense Tours Are Developed.*

All-expense tours are of most importance to the air transportation industry generally in the new market and for the first or second time traveller.

7789

As a new international tour market is detected, either a carrier or a tour operator proceeds to develop a package to sell that market. If it is the tour operator who takes the lead, he usually comes to a carrier or carriers and asks for support of the air tour he is developing. If it is the carrier which decides to take the lead, it may itself create the "package" and then have a tour operator perform the details of the ground arrangements. In this case the carrier itself then prints and distributes the tour folders. For example, UAL in addition to using tour operators, services to Hawaii, also has some tours for which it fulfills the role of the tour producer. More commonly, however, the carrier will, at the outset, interest and involve a tour operator and permit him to develop the tour package itself, to print the tour folder and distribute it, usually, of course, with the carrier's support.

In either case the applicable IATA agreement requires the tour operator to print or purchase at least 5,000 tour folders to obtain this support. There is no limit, of course, on how many the carrier may itself print or purchase from the operator.

The foregoing is the basic manner in which an international air carrier supports and makes possible the tour package: by participating in the development of the tour package, in the printing or purchasing of the tour folder,

and in its distribution, as well as by advertising the tour package. Once the tour package is developed, it is then retailed through the vast network of travel agency locations and through the carrier's own offices.

The carrier also participates in the tour business with its field force of sales representatives who work constantly

7790

with the retail travel agent to make sure that he is properly stocked with tour folders and that he is properly trained in how to sell them. The carrier moreover publicizes these tours. For example, Pan American has experts who do nothing but write articles on the tourist areas covered by the tours and these are widely distributed to the press. In addition, the retail travel agents throughout the world are supplied with various tour sales manuals by both the tour operators and the carriers at the expense of either the tour operators or the carrier. Complications of international routings and the great variety of tour offerings in this field have so far prevented the consolidation of these manuals into an industry publication but there is no lack of technical guidance material to the retailing travel agents in this area.

It would be useful to lay out the actual economies of tour production here. When the tour package meets the requirement of the IATA Resolution, the carrier pays to the agent a 10% commission on the air fare instead of the standard 7%. This amount is generally passed along by the tour operator to the retailer, if a retailer is involved.

The retail travel agent thus draws 10% on the air fare when selling a tour and will receive, in addition, 10% or slightly more from the hotels and sightseeing operators

involved in the package, either directly from them or from the tour operator who produced the package. The tour operator derives his profit from special arrangements made with sightseeing operators and hotels which often involve net rates or commissions rising to a fairly average level of 15%, and from marking up the total price of the ground arrangements involved in the tour.

7791

The carrier also makes other contributions to the development of the tour. IATA Resolution 204 permits the grant of one free ticket to a tour conductor for every fifteen tour passengers and a 50% reduction for a tour conductor accompanying eleven to fourteen passengers.

A partial survey has been made of the amounts expended by certain carriers on all-expense tour promotion for the calendar year 1963. For Pan American this promotional activity for Hawaii, Alaska and Pacific markets cost $258,000, and for Latin American markets the expenditure amounted to $357,000. Northwest's expenditure for Hawaii, Alaska and Pacific tour promotion was $93,000 and United spent $100,000 in promoting its Hawaii all-expense tour market. Braniff estimates its expenditure for the Latin American area at $99,000, and for Mexico only American expended $8,000 while Western estimates expenditures of $200,000 in this market.

II. *Specific Examples Of Promotion Of All-Expense Tours.*

Exhibit JI-1082 consists of Northwest's Tour Manual and JI-1081 consists of folders of Pan American, TWA, Northwest, UAL, American, Braniff and Western relating to international, overseas, Hawaiian and Alaskan markets.

It should be emphasized that these folders are merely a selection from the total production by tour operators and carriers each year. As to their scale, no tour operator would approach the national U. S. market with the printing of less than 50,000 copies, and many of the folders

7792

illustrated in the exhibit have been printed in numbers running well over 100,000 copies per year. The total tour availability runs into many millions of individual folders, both of special and of general interest to the prospective passenger, be he golfer, skin-diver, archeologist, camera fan, theatre critic, historian, or just plain tourist. Thus an immense variety of offerings is available to him to meet his most varied desires. Moreover, this is true not only in the U. S. sales market but everywhere that a mass tourist market exists throughout the world. In the case of Pan American, the copies of these folders are distributed by the tour operator or the carrier to all of Pan American's own 289 sales outlets and to the 8,500 travel agency locations which Pan American, under its highly conservative appointment policy, has under appointment throughout the world, and to many of the 9,000 interline ticket offices which are trained to issue tickets on Pan American's behalf. Thus in the case of Pan American alone there are some 15,000 sales outlets for these packages around the world. This policy is generally followed by other carriers as well in promoting this type of service.

III. *Dollar Volume Of All-Expense Tour Operations.*

While it has not been possible to obtain figures for all of the U. S. flag international carriers, all-expense tour

(7792, 7793)

business is of immense importance to all of them and they, as well as travel agents, derive great benefit from the carriage of this kind of traffic.

The Pan American figures will serve as an example of this importance. For the calendar year 1963, revenues

7793

from the carriage of all-expense tour passengers in the Pacific and Hawaiian area amounted to $17,939,000 or 13.6% of its passenger revenues obtained in this area. In Latin America, the revenue figure was $10,302,000, or 8% of its applicable passenger revenue, and in its Alaska operations $153,000, or 3.5% of passenger revenues in that geographic area. Northwest has estimated revenues from the carriage of such passengers at $2,670,000, producing for that carrier 7.6% of its Pacific, Hawaii and Alaska area passenger revenues and representing 8,900 passengers. In its Hawaii market, United carried 40,542 passengers, 15.1% of its total Hawaii passengers, for revenues of $5,000,000.

8084

JOINT INTERVENORS' EXHIBIT JI-B

TESTIMONY OF JAMES F. MONTGOMERY

* * * * *

D. The grant of all expense tour authority would cause serious diversion.

All expense tours would appeal primarily to the vacation traveler. Attached to my testimony as Appendix A is a table which shows the enormous amount of such revenue now obtained by the certificated carriers which would be exposed to diversion by grant of the authorizations herein.

It is also pertinent to note the amount of revenues obtained by the scheduled carriers from travel agents' sales: for example, 64% for Braniff in its Latin American operations, and almost 39% for Pan American in its Pacific operations.[1] The passengers who produced these revenues are, in effect, subject to the control of the travel agents. Now this is a situation of which I approve entirely. Pan American and, I believe, most other carriers fully recognize that agents are of vital importance in the air transport business because the agent and the airline today have a common goal. However, this situation would radically

[1] Both figures are low because they do not include interline and general agents' sales made by agents, and because the total sales against which the percentages are calculated include both military and charter revenue.

change if agents were allowed to charter aircraft for all expense tours. Assuming such an agent's charter, his primary economic incentive would be to fill his plane, and he would do all in his power to persuade a passenger to take that charter flight instead of selling him a ticket on a scheduled flight.

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BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Supplemental Air Service Proceeding

Docket No. 13795

BRIEF TO THE EXAMINER OF

American Airlines, Inc.,
Braniff Airways, Inc.,
Continental Air Lines, Inc.,
Delta Air Lines, Inc.,
Eastern Air Lines, Inc.,
National Airlines, Inc.,
Northwest Airlines, Inc.,
Pan American World Airways, Inc.,
Trans World Airlines, Inc.,
United Air Lines, Inc., and
Western Air Lines, Inc.

POGUE & NEAL
1001 Connecticut Avenue, N.W.
Washington, D. C. 20036

March 19, 1965

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• • • • •

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Recommended Decision of Examiner Robert L. Park

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

SUPPLEMENTAL AIR SERVICE PROCEEDING

Docket 13795 *et al.*

Served: August 27, 1965

Upon: APPLICANTS:

Leonard Bebchick, 1225—19th Street, N. W., Washington, D. C. 20036, for AAXICO Airlines, Inc.

Ramsay D. Potts, 910—17th Street, N. W., Washington, D. C. 20006, for American Flyers Airline Corporation.

George Berkowitz, 233 Broadway, New York 7, New York, for Capitol Airways, Inc.

F. A. Conner, Agent, P. O. Box 122, Miami Springs, Florida, for Conner Air Lines, Inc.

Warren E. Miller, 810—18th Street, N. W., Washington, D. C., for Conner Air Lines, Inc., and Johnson Flying Service, Inc.

Robert R. Johnson, President, Johnson Flying Service, Inc., Box 1366, Missoula, Montana, for Johnson Flying Service, Inc.

Howard S. Boros, 711—14th Street, N. W., Washington, D. C. 20005, for Holiday Airways, Inc.

(10010, 10011)

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Lester M. Bridgeman, 1027 Woodward Building, Washington 5, D. C., for Saturn Airways, Inc., and Vance International Airways, Inc.

James J. Bierbower, P. O. Box 19067, Washington 6, D. C., for Southern Air Transport, Inc.

(continued)

Exceptions, if any, must be filed with the Docket Section, Civil Aeronautics Board, Washington, D. C. 20428, and served upon all parties within 10 days after the date of service shown above. Briefs may be filed and served on all parties within 20 days after the date fixed for filing exceptions.

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Vance Roberts, P. O. Box 320, Boeing Field, Seattle, Washington, for Vance International Airways, Inc.

James H. French, 1625 K Street, N. W., Washington, D. C. 20006, for Zantop Air Transport, Inc.

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Harry White, Pacific Air Lines, Inc., International Airport, San Francisco, California, for Pacific Air Lines, Inc.

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(10012)

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R. E. McKaughan, President, 11th Floor, Lincoln Liberty Center, Houston 2, Texas, for Trans-Texas Airways, Inc.

RULE 14 PARTICIPANTS

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Clement T. Mayo, Defense Traffic Management Service, Room 1929, Building T-7, Washington, D. C., for the Department of Defense.

OTHERS

Charles A. Hobbs, 1616 H Street, N. W., Washington, D. C., for the American Society of Travel Agents.

James Lawrence Smith, Civil Aeronautics Board, Washington, D. C., for the Bureau of Economic Regulation.

Martin L. Friedman, Chapman, Friedman, Shea, Clubb, and Duff, Pensylvania Building, Washington, D. C. 20004, for United States Overseas Airlines, Inc. (Change of Counsel)

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UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

SUPPLEMENTAL AIR SERVICE PROCEEDING

Docket 13795 *et al.*

It is recommended that the Board find:

1. Six applicants—Conner Air Lines, Inc., Holiday Airways, Inc., Overseas National Airways, Inc., Standard Airways, Inc., Stewart Air Service, and United States Overseas Airlines, Inc.—do not possess the qualifications necessary for certification as supplemental air carriers and their applications should therefore be denied.

2. The remaining eleven applicants—American Flyers Airline Corp., Capitol Airways, Inc., Johnson Flying Service, Inc., Modern Air Transport, Inc., Purdue Aeronautics Corp., Saturn Airways, Inc.-AAXICO Airlines, Inc., Southern Air Transport, Inc., Trans International Airlines, Inc., Vance International Airways, Inc., World Airways, Inc., and Zantop Air Transport, Inc.—should all be certificated to engage in supplemental air transportation domestically between the 50 States and the District of Columbia. Certifications required for supplemental air transportation between the United States and overseas and foreign areas are as follows: (a) Canada—Johnson and Purdue; (b) Canada and Mexico—American Flyers,

Modern, Vance, and Zantop; (c) Caribbean—American Flyers, Capitol, Saturn-AAXICO, Southern, TIA, and World; (d) Central and South America—TIA and World; (e) Transpacific—Southern, TIA and World; and (f) Transatlantic (cargo only)—Capitol and Saturn. Except in the transatlantic area where the carriers selected already have passenger charter authority, all certificates should include operating rights with respect to both persons and property.

3. All of the successful applicants should retain worldwide authority to perform planeload charters for the Department of Defense on a permanent basis.

4. The supplemental air transportation services authorized include the following: (a) traditional planeload passenger and cargo charters; (b) split charter authority limited to traditional passenger charters, which would permit a maximum of three groups per aircraft with each group to consist of 40 or more passengers; (c) all-expense tour charters to tour operators.

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5. All-expense tour charters should be authorized under regulations which, among other things, (1) require individual pre-flight approvals from the Board and any necessary exemptions for tour operators before such charters are operated; (2) set minimum duration and stop requirements of seven days with at least two destination cities, no less than 50 miles from each other, to be served on each tour; and (3) require that the cost to the passenger

of the tour be at least 110 percent of the lowest basic, applicable fare of the scheduled air carriers, provided that in all cases the ground elements of the tour shall cost at least $15.

6. Except for all-expense tour charter authority, the certificates authorizing interstate supplemental air transportation should be permanent. Interstate all-expense tour charter authority, and all certificates for overseas and foreign supplemental air transportation, should be granted for an experimental period of five (5) years.

7. Regulations relating to supplemental air carriers should be revised in accordance with the recommendations contained in Appendix F hereto.

Appearances:

Leonard Bebchick for AAXICO Airlines, Inc.
Ramsay D. Potts for American Flyers Airline Corp.
George Berkowitz for Capitol Airways, Inc.
Warren E. Miller for Conner Air Lines, Inc., and Johnson Flying Service, Inc.
Howard S. Boros for Holiday Airways, Inc.
Albert F. Beitel for Modern Air Transport, Inc.
Stephen D. Potts for Overseas National Airways, Inc.
Jerrold Scoutt, Jr. and *Walter D. Hansen* for Purdue Aeronautics Corp., and World Airways, Inc.
Lester M. Bridgeman for Saturn Airways, Inc., and Vance International Airways, Inc.
John J. Klak for Standard Airways, Inc.

(10014, 10015)

Robert E. Fraley for Standard Airways, Inc., and Stewart Air Service.

James J. Bierbower for Southern Air Transport, Inc.

Clayton L. Burwell for Trans International Airlines, Inc.

James H. French and *Robert J. Wilson* for Zantop Air Transport, Inc.

James Bell, George Neal, Brian Elmer, and *Robert Shorb* for the Trunkline Intervenors.

James Bell for Alaska Airlines, Inc.

James M. Verner and *John H. Suda* for Allegheny Airlines, Inc., Bonanza Air Lines, Inc., Frontier Airlines, Inc., Hawaiian Airlines, Inc., Lake Central Airlines, Inc., Ozark Air Lines, Inc., and Trans-Texas Airways, Inc.

Edwin I. Colodny for Allegheny Airlines, Inc.

Albert F. Grisard for Bonanza Air Lines, Inc., and Lake Central Airlines Inc.

Ivan V. Kerno and *Norman L. Meyers* for The Flying Tiger Line, Inc.

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Harry A. Bowen and *Richard A. Fitzgerald* for Frontier Airlines, Inc.

Vernon Bortz for Hawaiian Airlines, Inc.

Robert B. Hankins for Mackey Airlines, Inc.

Jean Paul Bradshaw for Ozark Air Lines, Inc.

Cecil A. Beasley for Pacific Airlines, Inc., Piedmont Aviation, Inc. and Southern Airways, Inc.

Alexander E. Bennett and *Howard C. Westwood* for Pan American-Grace Airways, Inc.

Jerry W. Ryan, James F. Bell, and *George Neal* for Pan American World Airways, Inc.

Stephen L. Gelband and *Joel Fisher* for Seaboard World Airlines, Inc.

Theodore I. Seamon for Trans Caribbean Airways, Inc.

Clement T. Mayo for the Department of Defense.

Charles A. Hobbs for the American Society of Travel Agents.

James Lawrence Smith and *William J. Driscoll* for the Bureau of Economic Regulation.

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RECOMMENDED DECISION OF EXAMINER ROBERT L. PARK

INTRODUCTION

Simply stated, the basic purpose of this proceeding is to provide the factual record necessary for a comprehensive and cohesive review of the future role of the supplemental air transportation industry in this Nation's air transportation system. As finally constituted, the case involves some 39 applications prosecuted by 18 applicants, which generally seek the most unrestricted possible type of certificate of public convenience and necessity that would authorize worldwide charter operations for the transportation of both civil and military passengers and property.[1]

After the usual preliminary procedural steps, the case proceeded to public hearings, which were conducted in two stages: the first was devoted to the more generalized considerations of public convenience and necessity, and the second to the fitness and qualifications of the individual

[1] The applicants are: AAXICO Airlines, Inc. (AAXICO), American Flyers Airline Corp. (American Flyers), Capitol Airways, Inc. (Capitol), Conner Air Lines, Inc. (Conner), Johnson Flying Service, Inc. (Johnson), Modern Air Transport, Inc. (Modern), Overseas National Airways, Inc. (ONA), Purdue Aeronautics Corp. (Purdue), Holiday Airways, Inc. (Holiday), Saturn Airways, Inc. (Saturn), Southern Air Transport, Inc. (Southern), Standard Airways, Inc. (Standard), Stewart Air Service (Stewart), Trans International Airlines, Inc. (TIA), United States Overseas Airlines, Inc. (USOA), Vance International Airways, Inc. (Vance), World Airways, Inc. (World), and Zantop Air Transport, Inc. (Zantop). Two applications of an additional applicant, Sourdough Air Transport, were a part of the proceeding through the hearing phase but subsequently were dismissed for want of prosecution. Order E-21676, January 14, 1965.

applicants. In addition to the applicants, numerous other parties were granted leave to intervene, the most active of which in their participation throughout the proceeding

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were the Board's Bureau of Economic Regulation (Bureau) and the certificated route carriers (Joint Intervenors).[2]

The hearings have been completed, briefs to the Examiner have been filed and the matters at issue are now ripe for decision.[3]

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[2] The Joint Intervenors are composed of Pan American World Airways, Inc. (Pan American) and all of the trunkline air carriers except Northeast Airlines, Inc., viz., American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc. As shown by the service list accompanying this decision, the other intervening parties are the American Society of Travel Agents, Mackey Airlines, Inc., Pan American-Grace Airways, Inc., Trans Caribbean Airways, Inc., the two certificated Hawaiian carriers, two mainland U. S.-Alaska carriers, three all-cargo carriers, and nine local service carriers.

[3] The applications under consideration here involve requests not only for certificates to engage in interstate supplemental air transportation, on which the Board may take final action, but also seek authorizations to engage in overseas and foreign supplemental air transportation. Disposition of the applications to the extent that they request the latter types of authority is subject to the approval of the President pursuant to section 801 of the Act. The orders and proposed forms of certificates which are appended give recognition to the Presidential and non-Presidential portions of the proceeding. However, in view of the close interrelationship of the facts, issues, and considerations applicable to both the domestic and international phases of the applications, the issuance of a separate decision by the Examiner as to each phase was not considered to be either feasible or desirable. Accordingly, this recommended decision encompasses all matters involved in the proceeding, *cf.* Recommended Decision of Examiner Wiser, *American-Eastern Merger*, Docket 13355, November 27, 1962 (f.n. 2, p. 1).

Background

The present-day supplemental air carriers have had a complicated and often turbulent history. While their development has been considered in detail on numerous occasions by the Board and the courts, a brief consideration here of the more significant background facts is necessary to an understanding of the setting within which this case is to be decided.

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Since the inception of regulation in 1938 under the Civil Aeronautics Act, the predecessor to the present statute, the American air transportation system has had "non-scheduled", "irregular", or "supplemental" operators. Originally they functioned under a general exemption which relieved them of the necessity of obtaining a certificate of public convenience and necessity required by section 401(a) of the Act and of complying with certain additional regulatory provisions that otherwise would be applicable to their limited operations.[4] In the initial years their flight activities tended to be of a highly specialized nature, conducted with small aircraft, and normally of a kind associated with a fixed base operation.

The close of World War II brought with it a substantial surplus of large transport-type aircraft and flight-oriented personnel desirous of placing them in commercial service. This development meant an increased economical signifi-

[4] Then, as now, the exemption provision (section 416(b)) enabled the Board to relieve an air carrier of such requirements upon appropriate findings of undue burden upon the carrier and of public interest.

cance for "nonscheduled" air transportation services and it also posed additional regulatory problems for the Board. The Board responded first by modifying its blanket exemption regulation in 1947 to require, among other things, a Letter of Registration from the Board as a condition precedent to operations with large aircraft, the holders of which were known as large irregular carriers. Generally speaking, these carriers were authorized to engage in interstate and overseas air transportation of persons and property (and foreign air transportation of property only)

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between any two points, provided that the services were held out and operated on an infrequent and irregular basis.[5]

Although the Board imposed a "freeze" on issuance of new Letters of Registration in 1948, the large irregulars continued to operate in this fashion until 1949. In that year the regulation was again revised so as to terminate the blanket exemption, and the Board in lieu thereof began to act upon applications for individual exemption authority. These applications were in various stages of processing when the Board, in September 1951, decided to institute the *Large Irregular Air Carrier Investigation*, Docket 5132 *et al.* The purpose of the *Investigation* was to determine (1) the appropriate place of the large irregulars in the national air transportation system and the extent of the

[5] The various geographic components of air transportation are defined in section 101(21). In general terms, interstate operations are between the 50 states; the overseas category involves air transportation service between the United States and its territories and possessions; and foreign air transportation is that between a place in the United States and a place outside thereof.

operations which they should be permitted to conduct, (2) the carriers to receive operating authority, and (3) whether the authorization should be by way of certificate under section 401 of the Act or by exemption from the certificate and other requirements.

The *Investigation* consumed over a decade of hearings, decisions, and court litigation. In 1955 the Board decided the public interest issues in the case.[6] It found that the large irregular carriers, thereafter to be known as sup-

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plemental air carriers, were performing a useful public service responsive to a public need and that their authority should be continued and enlarged. The Board concluded that, in addition to an unlimited number of planeload charter operations, the supplementals should be permitted to conduct regularly scheduled individual services up to a maximum frequency of 10 one-way flights per month between any two points.[7] At the time the Board did not undertake to decide the questions concerning the applicants' qualifications and the form of authority ultimately to be granted, but issued an exemption giving the entire class of carriers the new authority on an interim basis pending

[6] *Investigation*, 22 C. A. B. 838 (1955).

[7] Geographically, the authority to operate charter flights and limited frequency individual passenger and cargo services applied in interstate, intraterritorial (excluding services within Alaska), and overseas air transportation, while flights in foreign air transportation were to be restricted to charter and individually waybilled cargo services only. For reasons not here pertinent, the new authorizations as to foreign air transportation did not become effective, and the authority in this area reverted to the preexisting "irregular" authority. Order E-10161, April 3, 1956.

resolution of these further questions. Upon judicial review the Court, while not taking issue with the Board's determination as to the need for and scope of supplemental services, found that the Board's action was defective in that the Board had made insufficient findings to support the interim exemption, since it could not be determined from the Board's order what circumstances "could make certification an undue burden" on the supplementals or why their certification "is not in the public interest."[8]

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While the judicial review proceeding was pending, and subsequently, the *Investigation* was going forward on the issues of carrier qualification, carrier selection, and the form of authority to be issued. In 1959 the Board reached final decision in the interstate phase on these questions and issued certificates to the applicants comprising the supplemental air carrier class who were found to be qualified.[9] These certificates, among other things, authorized the holders to engage in air transportation domestically of the scope found required in the 1955 decision, without regard to fixed routes or designated points. Upon judicial review, however, the Board's action was again found to be legally defective, this time by virtue of the Court's holding that section 401(e) of the Act precluded the issuance of

[8] *American Airlines, Inc.* v. *C. A. B.*, 98 U. S. App. D. C. 348, 235 F. 2d 845, 851 (1956), *cert. den.* 353 U. S. 905 (1957).

[9] *Investigation*, 28 C. A. B. 224 (1959). The Board thereafter decided to issue similar certificates in the overseas and foreign phases. *Investigation*, 32 C. A. B. 856 (1961). However, the President withheld his approval and the certificates never became effective in view of the Court's action in the *United* case, *infra*.

certificates as granted by the Board which did not contain named terminal and intermediate points, and also precluded the 10-flight limitation.[10]

Being thus unsuccessful in its efforts to authorize supplemental air carrier operations of the type and scope it deemed required by the public interest, the Board presented

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the matter to Congress for clarifying legislation. The Congress first enacted stop-gap interim legislation which was designed to afford Congress further time within which to consider the broader questions.[11] To this end, it authorized the Board to validate previously existing certificates and to confer interim operating authority to engage in supplemental air transportation for a further period of 20 months. Then, on July 10, 1962, Congress enacted Public Law 87-528,[12] which is of direct relevance to the present proceeding.

Among other things, Public Law 87-528 amended the Act by adding new definitions of "supplemental air car-

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[10] *United Air Lines, Inc.* v. *C. A. B.*, 108 U. S. App. D. C. 1, 278 F. 2d 446 (1960), vacated *sub nom. All American Airways, et al.* v. *United Air Lines, et al.*, 364 U. S. 297 (1960). Section 401(e) of the Act as it existed at that time contained an unqualified requirement for specification of terminal and intermediate points in a certificate and an explicit direction that no certificate should restrict the right of a carrier to add or change schedules, equipment, etc. As noted *infra*, there have been subsequent amendments of the Act directed to these problems as they relate to supplemental air carriers (section 401(e)(3) and (e)(4)).

[11] Public Law 86-661, 74 Stat. 527, July 14, 1960.

[12] 76 Stat. 143.

rier" [13] and "supplemental air transportation" [14] as well as a new subparagraph to section 401 of the Act concerning the issuance of certificates for supplemental air transportation.[15] The net effect of these various actions was to supersede all prior regulation of the supplementals and to confine the future role of these carriers exclusively to the operation of charter services. The supplemental air transportation which the Board may authorize was limited to that which would supplement the scheduled ser-

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vices certificated pursuant to other subsections of section 401(d),[16] and is to be made subject to "such limitations as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this Act." [17] As far as the specification of terminal and intermediate points in supplemental air carrier certificates is concerned, the amended Act requires such specification to the extent that the Board considers it practicable, and otherwise it "shall designate only the geographical area or areas within or between which service may be rendered." [18]

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[13] Sec. 101(32).

[14] Sec. 101(33).

[15] Sec. 401(d)(3).

[16] *Id.*

[17] Sec. 401(d)(3).

[18] Section 401(e)(3). Other of the principal amendments of the Act should be briefly noted. Section 401(n) was added to give the Board broad powers with respect to supplemental air carriers in the imposition of requirements for insurance, performance bonds

(10025, 10026)

In addition, upon findings of fitness, willingness, and ability properly to perform such transportation and to conform to regulatory requirements, the legislation empowered the Board to issue new interim certificates or new interim authorizations for supplemental air transpor-

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tation to those applicants meeting specified requirements, which would be effective pending disposition of their applications for permanent authority pursuant to section 401(d)(3) of the Act.[19] In order to ease the transition to an all-charter type of operation, Public Law 87-528 also authorized the Board to permit, for a phase-out period not to exceed two years from date of enactment of legislation, continuation of individually ticketed and individually waybilled services subject to certain restrictions.[20]

The Board's initial processing of the requests for interim authority was completed in the fall of 1962. All of the supplemental air carriers issued interim certificates were

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or equivalent security arrangements for the protection of the public, and minimum standards of operational performance. It also imposed a continuing fitness requirement upon the supplementals and gave the Board powers of suspension and revocation under particular conditions. The Board's authority to impose civil penalties was extended to violations of economic regulatory provisions (section 901), and under new section 417 the Board may issue special operating authorizations to supplemental air carriers so as to enable them to meet temporary needs for individually ticketed and individually waybilled service between points within the United States, upon finding the existence of the circumstances specified in this section.

[19] P. L. 87-528, Sec. 7.

[20] Sec. 9.

authorized (1) to perform unlimited cargo and passenger charter flights in interstate air transportation, (2) to engage in air transportation of persons and property pursuant to contracts with the Department of Defense, and (3) to conduct cargo charter flights in overseas and foreign air transportation subject to certain conditions. Virtually all were granted civil passenger charter rights in overseas air transportation, mostly for use as backhauls in conjunction with military operations, and a few may conduct intraterritorial cargo and/or passenger charter flights. No supplemental initially received authority to transport passengers in foreign air transportation. However, more recently two supplemental carriers were certificated to pro-

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vide transatlantic civil passenger charters,[21] and the interim certificates of four other supplementals have been amended to include authority to operate civil passenger charters in the transpacific or transatlantic areas, or both, for temporary periods.[22] About half of the interim certif-

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[21] Capitol and Saturn in the *Transatlantic Charter Investigation*, Docket 11908 *et al.*, Orders E-20530 and E-20531 served March 3, 1964. The Board originally also selected ONA as a third carrier but the President returned the Board's order without his approval because of serious questions concerning ONA's financial fitness that arose after the Board's decision. The record has now been reopened for further hearings to determine whether supplemental service additional to that provided by Capitol and Saturn should be authorized, and if so, by whom. Order E-21966, March 30, 1965.

[22] World and TIA both received such authority with respect to transpacific operations for the interim period pending disposition in this proceeding of their applications for permanent certificates. Orders E-21304, September 21, 1964, and E-21574, December 9, 1964. The same two carriers may now perform transatlantic pas-

icate holders were granted certificates that included authority to conduct individually ticketed and individually waybilled services during the transitional period, authority which expired on July 10, 1964, by the terms of Public Law 87-528.

Despite the tortuous course of their fortunes through the entire period of their development, the large irregulars and their successors, the supplementals, by one means or another retained continuous authority to operate while the obstacles in their path were being removed. Their ranks, however, were substantially depleted due to such factors as economic attrition, certification for scheduled services, revocation for violations or failure to operate, Board findings of lack of qualification, and the like. Thus, in contrast

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to the 142 Letters of Registration issued to irregular carriers in the 1947-1948 period, only 30 supplemental air carriers held authority as of the date of enactment of Public Law 87-528. Twenty-seven applications for interim authority under that legislation were processed by the Board and, insofar as relevant here, 15 were granted.

The present proceeding is the culmination of this evolutionary process, for it is here that disposition will be made of the applications for permanent certificates as supplemental air carriers filed pursuant to Public Law 87-528.

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senger charters for the 1965 season, with their authority expiring on September 30, 1965. Order E-22045, April 16, 1965. More recently American Flyers and Modern both received identical transatlantic authority. Order E-22260, June 2, 1965; Order E-22357, June 24, 1965.

Fifteen of the 18 applicants are the 15 survivors who were issued interim certificates or authority;[23] two others, Conner Air Lines and Stewart Air Service, are former large irregular carriers which do not hold interim authority; and the remaining one, Holiday Airways, is a new company with no prior experience in conducting air transportation services.

The Issues

From the foregoing discussion it is evident that the questions for decision run the entire gamut of matters relevant to ascertaining the permanent place, if any, of the supplemental air carriers in the air transportation system. As

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stated by the Board, the ultimate issues are those posed by section 401(d)(3) of the Act, viz.,

> "(1) whether the public convenience and necessity require the supplemental air transportation requested by the applications; (2) whether the applicants are fit, willing, and able properly to perform the transportation covered by their applications and to conform to the provisions of the Act and the rules, regulations,

[23] Of the 15, only 12 have been operating currently. They are AAXICO, American Flyers, Capitol, Johnson, Modern, Purdue, Saturn, Southern, TIA, Vance, World and Zantop. AAXICO previously was an all-cargo carrier rather than a supplemental air carrier but was able to qualify under the provisions of P. L. 87-528. USOA's interim certificate was revoked for lack of financial qualification (Order E-21325, September 24, 1964); Standard was suspended on the same grounds by Order E-20468, February 12, 1964; and ONA discontinued operations on October 4, 1963, and is presently involved in bankruptcy proceedings.

and requirements of the Board thereunder; and (3) what limitations, if any, should be imposed by the Board to assure that the service rendered pursuant to any certificate to be issued will be limited to supplemental air transportation is defined in the Act." [24]

Included are not only questions relating to civil operations involving supplemental air transportation but also those concerned with the extent to which any of the applicants should be certificated to provide air transportation services for the Department of Defense.

These extensive issues logically divide themselves into public convenience and necessity, fitness, and regulation issues, and include numerous subissues within each category.[25] In broad outline, public convenience and necessity matters are concerned primarily with the public need for supplemental air carrier service, and require consideration of the impact that certification of the applicants, or any of them, would have on the other presently certificated carriers. Also inherent in the "need" aspect of the proceeding is the determination of whether the public convenience and necessity require that any authority granted be issued to a class of carriers, as has been the Board's practice

heretofore, or whether such authorizations should be tailored to meet particular needs and requirements. Geo-

[24] Order E-20573, March 13, 1964, p. 3.

[25] The subissues as developed as the result of the prehearing conference are contained in Appendix A to the Prehearing Conference Report, issued June 1964.

graphically, the possible areas for certificating operations by the applicants are worldwide in scope, except that the Board has excluded from consideration here any grant of authority to supplemental air carriers for civil passenger charter flights in the transatlantic area and the authorization of supplemental air transportation within Alaska.[26]

Fitness is essentially the matter of qualification applicable to any party seeking certification, and the standards used in making this judgment must give due recognition to any inherent differences between supplemental air transportation and the more conventional types of certificated operations. Important ingredients are both operational and financial fitness, as well as comparative qualifications in those instances where the Board may be picking and choosing between competing applicants. The terms, conditions, and limitations imposed on the supplementals must assure sound regulation and adequate protection of the public; and they must carry out the Congressional directive that the services permitted be of a kind that "supplement the scheduled service" authorized by other types of certificates issued by the Board. Stated somewhat

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[26] Orders E-20573, March 13, 1964, and E-20902, June 5, 1964. As indicated previously, section 401(e)(3) requires that any certificates issued designate terminal and intermediate points if "practicable", and if not, the designation in lieu thereof of the geographic area or areas for service. In addition, it already has been noted that the disposition of all applications is subject to approval of the President insofar as they request authority to engage in overseas and foreign supplemental air transportation. All applicants except Stewart Air Service have requested this authority, and copies of their applications making this request have been transmitted to the President in accordance with the provisions of section 801 of the Act.

differently, there is a basic statutory mandate that authorizations for supplemental air transportation, which by definition is confined to "charter trips in air transportation", respect the distinction between charter or group transportation, on the one hand, and individually ticketed and individually waybilled air transportation services, on the other.[27] Except in situations contemplated by section 417 of the Act, individual services are, and have been since the enactment of Public Law 87-528, the sole prerogative of the certificated scheduled carriers.[28]

By far the greatest emphasis throughout has been upon the applicants' efforts to expand the scope and nature of their authority. Virtually all of the applicants seek removal of the historic barriers against the supplementals as a class engaging in passenger operations in foreign air transportation so that they may for the future provide unlimited passenger and cargo charter operations in all geographic areas open to them under the issues in this proceeding. Most applicants do not oppose a grant of authority of identical scope to other applicants found qualified.[29] And all urge that the Board in delineating

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[27] Section 101(33) defines "supplemental air transportation" as "* * * charter trips in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this Act to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d)(1) and (2) of this Act."

[28] Section 417 is the vehicle by which supplementals may be authorized to meet temporary and limited needs for individual services. See f.n. 18, *supra*.

[29] To the extent relevant, the positions of the various applicants are discussed in the summaries set forth in Appendix A hereto.

their authority redefine the word "charter" to include "all-expense tour" charters to ticket agents or "split" charters, or both, in addition to the traditional planeload charters now authorized.[30]

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[30] As will appear in more detail later, the word "charter" is undefined in the Act. Generally, the Board has heretofore restricted its meaning to the engagement of the entire capacity of an aircraft by a person for his own use or by a representative of a group for the use of such group, provided, however, that ticket agents may not charter aircraft themselves and in turn sell transportation to the public on an individual basis. The usual types of planeload charters are "pro rata" charters, where the cost is divided among the passengers transported; "single entity" charters, where the entire cost is borne by the charterer; and "mixed" charters, where the cost is absorbed partly by the participants and partly by the charterer.

"Split" charters are ones in which one-half of an aircraft is engaged by one person or group otherwise eligible to obtain charter services, and the remaining half is engaged by another such person or group, thus permitting two relatively small groups jointly to charter an aircraft. At present this type of authority is enjoyed by the supplemental carriers holding authority to provide transatlantic civil passenger charters.

The "all-expense tour" charter does not presently exist in our transportation system. It is generally understood to mean a charter in which a tour operator or ticket agent would engage an aircraft for the carriage of persons traveling on all-expense tours. Such tours would involve not only the point-to-point air transportation but also related land portions such as the necessary surface transportation, hotel accommodations, sightseeing, etc. The question of authorizing all-expense tour charters has been litigated only in the *Transatlantic Charter Investigation*, and the Board's decision denying applications for such authority in that case has not been finally acted upon by the President. Order E-20776, April 30, 1964. In January 1965 the Board proposed to grant such authority to all supplementals on an interim basis pending decision on their applications in this case, but subsequently it deferred any further action at this time. (SPDR-6, January 5, 1965, and SPDR-

The pertinent contentions of the parties concerning the issues and the relevant evidence in support of their positions are discussed in appropriate sections of this decision.

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It is worthy of note at this point, however, that on public convenience and necessity issues there are substantial areas which are not in dispute. Thus, no party opposes the grant of unlimited passenger and cargo authority to the applicants for the conduct of military operations on behalf of the Department of Defense, although the Bureau, unlike the applicants, would not grant such authority on a worldwide basis but would make it coextensive with the civil authority, if any, awarded to each applicant. Further, there is no objection to the certification of qualified applicants to provide conventional passenger and cargo planeload charters between the contiguous 48 states (or between such states and transborder points), provided that the Board imposes appropriate restrictions to prevent the rendition of individually ticketed services in the guise of charters.[30a] The real controversy centers around any geo-

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6A, April 27, 1965, Docket 15777.) There is some suggestion by various applicants here that they should be authorized to sell individually ticketed all-expense tours directly as well as by charters to ticket agents. The Board has already determined that such proposals are tantamount to individual services which do not fall within the scope of charter transportation. *Transatlantic Charter Investigation*, Order E-17607, October 18, 1961.

[30a] A possible exception is Flying Tiger. Although its position is not entirely clear, its brief to the Examiner (p. 4) is susceptible to the interpretation that the carrier opposes any service, civil or military, by any supplemental. However, Flying Tiger did not participate actively in the proceeding and has pointed to no evidence in support of such a position.

graphical expansion of supplemental air carrier operations beyond these limits, any liberalization of the charter concept to include split charters and all-expense tour charters, and, to a lesser extent, upon the fitness, willingness, and ability of particular applicants.

HISTORIC CHARTER OPERATIONS

A great mass of statistical compilations and other data were submitted by the parties concerning the past charter operations of the supplementals and the scheduled carriers. Perhaps the most significant is the informative and valuable work done by the Bureau in collecting and correlating information for the years 1961 through 1963 submitted by

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all carrier parties in this proceeding, and much of this data is reflected in capsule form in Appendix B to this decision. Appendix C, which is based upon the reports filed with the Board by the 15 applicants herein which were originally issued interim operating authority as supplemental air carriers, sets forth various comparative measurements of revenue and financial results for the supplemental industry for the years ended September 30, 1961-1964. The more important facts to be gleaned from the record with respect to past operations will now be considered.

The Dominance of the Military Charter Services. Although the supplementals always have conducted substantial operations for the military, during the latter forties and the decade of the fifties many concentrated primarily

(10034, 10035)

in other areas, particularly individually ticketed passenger transportation. In recent years, however, the reliance by the supplementals as a group upon military revenues as their primary source of income has become plainly evident. Today every operating supplemental except Johnson Flying Service engages in some form of military carriage. Whereas in 1959 military revenues represented somewhat over 50 percent of the total transport revenues of the supplemental air carriers, they now contribute 70 percent or more. The rising importance of the military dollar and the declining significance of individual sales for the years 1961-1964 are shown in the table below:[31]

	Trans. Revs.	% Mil.	% Civ.	% Ind. Sales
1961	$ 59,290,000	71.9	13.5	14.6
1962	75,686,000	74.3	12.2	13.5
1963	96,106,000	78.7	15.5	5.8
1964	100,420,000	71.6	25.1	3.3

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The degree of dependence upon operations for the Department of Defense is also shown by other indicators. In calendar year 1963, for example, 74.1 percent of the revenue passenger-miles flown by the supplementals and 90.8 percent of their total cargo ton-miles were attributable to their military services.

Notwithstanding the great difference in size when compared to the certificated route industry, the supplemental air carriers are firmly established as a source of primary reliance in meeting military requirements for charter ser-

[31] Appendix C.

vices. The situation in calendar year 1963, which was fairly representative of the relationship between the supplemental carriers and the scheduled carriers over the past few years, is graphically illustrated by the division of military charter revenue shown below:[32]

	Scheduled	Supplemental	Total
Military Passenger			
Interstate	$10,070,437	$ 6,911,686	$ 16,982,123
Overseas	—	6,344,558	6,344,558
Foreign	20,747,767	21,348,793	42,096,560
Military Cargo			
Interstate	5,363,230	27,406,534	32,769,764
Overseas	—	1,450,791	1,450,791
Foreign	2,311,580	6,175,073	8,486,653
TOTAL	$38,493,014	$69,637,435	$108,130,449

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Thus, about 64 percent of the total dollars spent by the military for civil air transport was received by the supplementals. From a geographic standpoint, they were the primary or exclusive operators in all areas except interstate military passenger charter services, and even there the supplementals were responsible for 40 percent of the total revenue. The supplementals were particularly promi-

[32] As compiled from the Bureau's exhibits. There are some differences between these figures (as well as those concerning civil operations, subsequently discussed) and the dollar amounts set forth in Appendix B. However, the discrepancies are minor and have no material significance.

nent in the transportation of military cargo, receiving roughly 80 percent of the funds expended for such services.[33]

As might be expected, there has been a marked variation between the individual supplementals in the degree of their reliance on military revenues. Looking at the year ended September 30, 1964, to illustrate the point, the supplementals developed $71,865,000 in military contract and charter revenues. Three of the 15 applicants here who hold or then held supplemental authority—Johnson Flying Service, ONA, and USOA—performed no military services while those operated by three others—Purdue, Vance International, and Standard—developed under $80,000 each for the year. At the other extreme, World Airways was the recipient of $22,162,000 in military revenues, representing 89.2 percent of its total contract and charter revenues and about 30 percent of the military revenues of all the supplementals combined. World, together with four of the other major supplemental carriers having a relatively high dependence on military operations,[34] as a group

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accounted for 79 percent of the military revenues of the entire supplemental industry.[35]

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[33] The comparison may also be made on the basis of charter passengers and tons of cargo transported. In calendar 1963 the supplementals carried some 330,000 military passengers and 26,048 tons of cargo as contrasted to about 274,000 passengers and 3,467 tons for the route carriers.

[34] AAXICO (98.8 percent), Capitol (66.4 percent), Southern (77.7 percent), and TIA (83.9 percent).

[35] The calendar year 1963 total of some $38.5 million in military charter revenues of the certificated route carriers was divided

Supplemental Civil Operations. During the latter 1950's and early 1960's the civil contract and charter revenues of the supplementals tended to remain static with little in the way of a discernible pattern. However, starting with 1962 there has been a sharp acceleration in the absolute volume and relative significance of such revenues, a development which is largely attributable to two factors. The first was the enactment of Public Law 87-528 which required a phase-out of all individually ticketed and waybilled services of the supplementals by July 10, 1964. The second was the announcement by the Department of Defense of its new commercial contract airlift policy under which "contracts for Fiscal Year 1966 * * * will be limited in amount so that carriers who receive contracts will derive at least 30% of their air transportation revenues during Fiscal Year 1966 from commercial sources." [36] This combination of circumstances has compelled the supplementals as a matter of practical necessity to lend every effort to the fullest possible exploitation of the civilian charter markets.

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roughly on the basis of 70 percent for the combination passenger-cargo carriers and 30 percent for the all-cargo carriers. The all-cargo carriers generated 97 percent ($7.5 million) of the military cargo revenues of the scheduled carrier industry, virtually all in the interstate and transatlantic markets, and about 40 percent ($4,123,490) of the interstate military passenger revenues. The largest single area for the combination carriers was military passenger carriage across the Pacific for which they received $20.7 million.

[36] JI-R-111. This policy contemplates that eventually the percentage of revenue from commercial sources should reach 60 percent.

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Historic data for the calendar years 1961-1963 as compiled by the Bureau, showing the functional and geographic distribution of the contract and charter revenues of the supplementals, is set forth below:

	1961	1962	1963
CIVIL PASSENGER	$3,847,262	$4,101,666	$6,003,769
Interstate	2,565,924	2,087,360	4,093,435
Overseas	1,121,881	1,865,184	1,730,437
Latin America & Caribbean	12,775	10,913	20,011
Transpacific	1,109,106	1,854,271	1,710,426
Foreign	159,457	149,122	179,897
North America	92,147	53,887	125,617
Latin America & Caribbean	—	21,101	—
Transpacific	67,310	74,134	54,280
CIVIL CARGO	561,126	1,025,824	1,345,810
Interstate	147,740	524,182	778,231
Overseas	145,537	175,602	289,282
Latin America & Caribbean	145,537	175,602	203,782
Transpacific	—	—	85,500
Foreign	267,849	326,040	278,297
North America	64,628	54,557	43,452
Latin America & Caribbean	171,393	130,244	194,060
Transpacific	—	—	26,785
Transatlantic	31,828	141,239	14,000
TOTAL	$4,408,388	$5,127,490	$7,349,579

It will be noted that the most sizeable increases in the 1963 total took place in the interstate passenger and cargo revenues and that revenues derived from operations in other geographic areas have not been large. The largest single item in overseas and foreign markets is the $1,710,426 appearing as overseas passenger revenues (transpacific), all of which was earned by World Airways as the result of mixed passenger and cargo flights operated under contract with Western Electric Company.[37]

Appendix C provides a more dramatic illustration of the rising tide of supplemental civil contract and charter revenues in both an absolute and relative sense. The supplemental industry totals for such revenues and their relationship to prior years were as follows:

	Amount	% Total	% Increase Prior Year
1962	$ 9,222,000	12.2	15.4
1963	14,924,000	15.5	61.8
1964	25,240,000	25.1	69.1[38]

[37] Since the supplementals lack certificate authority to transport civil passengers in the foreign field, such operations as they have had in this area were conducted pursuant to individual exemptions granted by the Board. In 1963, 49 applications were filed by the supplementals for authority to operate flights in the Caribbean, Latin America, and Bermuda areas. Between June 30, 1964, and June 1, 1965, the Board granted some 55 exemptions covering flights by the supplemental air carriers to Mexico, the Bahamas, Jamaica, and Bermuda, with the largest participants being American Flyers (19), Saturn (18), and Capitol (12). CAB, Weekly Summary of Orders and Regulations.

[38] Appendix B, prepared by the Bureau on a calendar year basis, shows civil charter revenues of $7,443,336 in 1963 and $27,982,592 in 1964. Here again, the principal areas of increase are in interstate passenger and cargo operations. As noted in the appendix, the 1964 total includes the substantial transatlantic revenues of Capitol and Saturn.

Despite the rapid growth of civil revenues in recent periods the supplemental air carriers as a group remain significantly short of the 30 percent requirement imposed by the Department of Defense. As of the year ended September 30, 1964, seven supplementals derived more than 30 percent of their transportation revenues from civil business while the remaining five operating carriers were below this percentage in varying degrees.[39] And, as in the case of operations for the military, the participation in civil revenues by the operating carriers does not fall into a pattern of even distribution but shows a wide fluctuation between the individual members of the class. In the year ended September 30, 1964, for example, civil contract and charter revenues for supplementals operating throughout the year ranged from a high of $7,793,000 for Zantop downward to $104,000 for a carrier such as AAXICO, the fifth ranking carrier in terms of military revenues. The top generators of civil revenues were Zantop ($7,793,000), Capitol ($5,340,000), Saturn ($3,455,000), and World ($2,690,000), and these four carriers together accounted for over $19 million, or 76 percent, of the civil revenues of all the supplemental air carriers combined.

The Present Status of the Supplemental Industry. The vast differences between the supplemental carriers reduce the value of generalizations and underline the necessity for

[39] Those exceeding the 30 percent limitation were American Flyers (33.8 percent), Capitol (31.8 percent), Johnson Flying Service (100 percent), Purdue (86.9 percent), Vance International (53.4 percent), Saturn (73.6 percent) and Zantop (46.3 percent). The carriers with less than the 30 percent ratio were AAXICO (1.2 percent), Modern (9 percent), Southern (18.9 percent), TIA (16.1 percent), and World (10.8 percent).

considering the situation of each individual carrier. With this caveat, some broad conclusions are apparent concerning their present status.

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There has been a noticeable improvement for the supplementals as a group in many of the indicia of operational and financial strength. Considered on a year-end September 30 basis, the total assets of the 15 applicants herein who were issued interim authority rose from $27,716,000 in 1961 to $95,090,000 in 1964; their operating revenues for the same years from $62 million to $103 million; and their operating profit in the same period from $2 million to $13 million. In the critical area of civil contract and charter revenues there has been an increase from $14,924,000 in 1963 to $25,240,000 in 1964, and such revenue now accounts for at least 25 percent of their total transport revenues. All six carriers holding fiscal year 1965 long term military contracts managed to improve their positions in this respect in this two year period. In the case of two carriers, AAXICO and World, the improvement on a percentage basis has been relatively small. However, two others—Capitol and Zantop—now meet the 30 percent criteria established by the Department of Defense, and the remaining two—TIA and Southern—recorded substantial gains in civil revenues.[40]

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[40] Appendix C. The increases in the percentage of total operating revenues represented by civil contract and charter business from the year ended September 30, 1963, to the same point in 1964 were as follows: AAXICO, 0.6 percent to 1.2 percent; Capitol, 14.9 percent to 31.8 percent; Southern, 8.5 percent to 18.9 percent; TIA, 1.3 percent to 16.1 percent; World, 8.3 percent to 10.8 percent; and Zantop, 36.3 percent to 46.3 percent.

(10041, 10042)

Despite the brighter outlook for the supplementals in some respects, there are still significant problem areas apparent from an overall assessment of their financial condition which affect most components of the group. Their total net worth has shown a sharp increase—$1.2 million in 1961 and $19,625,000 in 1964. However, as an industry

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they have not attained the one-to-one ratio of current assets to current liabilities, deemed desirable for most business enterprises, for any year in this four-year period. Further, in each of these four years the supplementals as a class have had a negative net working capital position—$1,552,000 in 1961, $5,208,000 in 1962, $8,820,000 in 1963, and $2,978,000 in 1964. Although this unfavorable working capital position has been a characteristic of the supplemental industry, it has not demonstrably interfered with the ability of most of the operating carriers to expand operations and improve net worth. For example, Capitol, TIA, and Zantop had a combined negative working capital position in the year ended September 30, 1964, of about $9.4 million. Nonetheless, for the same period they showed substantial individual operating profits, a combined operating profit of over $6 million, and a combined positive net worth of $6,366,000; in fact, they ranked between the second and fifth positions in the supplemental industry by these units of measurement.[1]

[1] It should be noted that both the industry net worth and working capital figures cited are affected adversely by the inclusion of data concerning USOA, Standard, and ONA, carriers which are not now operating. If they are excluded, so as to limit the industry to the 12 operating supplementals, the negative working capital position of the industry for 1964 would be reduced to $679,000 and total net worth increased by $2.3 million.

As the data in Appendix D disclose, despite such gains as they have been able to achieve the supplementals have occupied a modest role in the total air transportation picture. Operating revenues for the certificated route carriers increased from $3.57 billion in the year ended September 30, 1963, to over $4 billion in 1964, or 12 percent, compared to an increase from $98 million to $103 million, or 5 per-

cent, for the supplementals. While the supplementals as a group were increasing their operating profit from $5 million in 1963 to $13 million in 1964, that of the certificated route carriers more than doubled from $166 million to $350 million and rose to the 1964 level from a loss position of $16 million in 1961. In terms of distribution of the market, the relative positions of the respective groups have remained substantially unchanged—about 97.5 percent for the certificated route carriers and 2.5 percent for the supplementals. However, their respective participation in total industry operating profits clearly favors the certificated route carriers. In 1962 the latter group of carriers obtained 89.8 percent of the industry operating profits as contrasted to 96.4 percent in 1964, while the share of the supplementals declined from 10.2 percent to 3.6 percent in the same period.[42]

[42] The Joint Intervenors note that for the year ended September 30, 1964, five supplementals—AAXICO, Capitol, TIA, World, and Zantop—had sizeable rates of return on investment and on stockholders' equity. However, the Joint Intervenors would be the first to contend, were the question one relating to their own earnings, that profitability patterns must be assessed from a long range standpoint rather than by a keyhole approach. The record makes clear that the results indicated are not representative when viewed over a period of years, either for these individual carriers or for the supplemental industry generally.

(10043, 10044)

As has been the situation for the past several years, the paramount problem for the supplementals is how best to achieve a substantial expansion of their civil business. The solution to this problem is of fundamental importance both to provide a sound economic base for their operations and to permit them maximum participation in military revenues. While it may be reasonably anticipated that the level of military need for auxiliary assistance from civil air carriers will continue to be high or to increase, two

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other factors are of particular significance. The first is the Board's action in March 1965 setting new and reduced minimum rates for both international and domestic military air transportation, the effect of which will be to reduce the governmental cost for international military air transportation alone of about $19 million annually with additional savings to the government domestically.[43] Unless compensated for by carrier cost-savings or additional volume, the supplementals, as major participants in military carriage, may be materially affected.

The other military aspect is, of course, the future application of the Department of Defense "30 percent commercial" requirement. Appendix E illustrates the situation as it existed for the six supplemental air carriers holding long term military contracts for fiscal year 1965, based on operating results for the year ended September 30, 1964. Looking at their actual operating revenues for the year, the six carriers as a group were $5,265,000 short of meeting the 30 percent ratio had it been in effect during

[43] CAB Press Release, 65-25, March 18, 1965 (ER-432, PS-26).

that period. Taking their actual commercial revenues as representing the 30 percent, their maximum entitlement, as a group, to military revenues would have totaled $48,494,000, some $17.5 million less than the military revenues actually received. Put another way, in order to maintain their actual 1964 military revenues of $66 million, again assuming effectiveness of the Department of Defense policy, it would have been necessary for these carriers as a group to generate an additional $7,522,000 from civil business. Viewing the carriers individually, in order to maintain their 1964 level of military business, Capitol

and Zantop would have no difficulty since they fully met the 30 percent quota. However, four carriers—AAXICO, Southern, TIA, and World—had shortages in civil revenues necessary to comply with the 30 percent standard of $3,477,000, $566,000, $2,398,000, and $6,747,000, respectively.[44]

Since the close of the record the Department of Defense contracts for fiscal year 1966 have been awarded.[44a] The military will pay approximately $155 million for airlift by civil air carriers as compared to about $129 million in fiscal 1965. The share of the supplementals has been increased to $52,354,000 from the prior year level of $43,468,000 and the contracts will be performed by the same six supplemental air carriers. By reason of the loss of its LOGAIR contract in 1966 Capitol will experience a

[44] Should the Board approve the Saturn-AAXICO merger agreement, AAXICO, as the surviving carrier, will have substantially solved its problem in this respect.

[44a] Press Release CAB 65-78, June 30, 1965.

net loss in military revenues of $2,885,000. The remaining five, however, will have net increases—$1,925,000 for AAXICO, $670,000 for Southern, $1,755,000 for TIA, $51,000 for World, and $7,370,000 for Zantop.

Civil Operations of Other Carriers. In contrast to the vital role of civil contract and charter revenues for the supplementals, the civil charter business of the certificated route industry is a relatively minor part of their activities, whether gauged by passengers and tons of cargo carried, revenue passenger-miles, revenue aircraft miles flown, or other of the usual indicators. A breakdown of the revenues received for 1963 presents a fairly representative picture.

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As reported to the Bureau, the civil charter revenues for the scheduled carriers—trunks, local service carriers, all-cargo carriers and international combination passenger-cargo carriers—were as follows:

	Total
CIVIL PASSENGER	
Interstate	*$12,015,846*
Overseas	*898,908*
Latin America & Caribbean	898,908
Transpacific	—
Foreign	*3,430,287*
North America	1,098,184
Latin America & Caribbean	2,058,370
Transpacific	273,733
Total Civil Passenger	$16,345,041

(10046, 10047)

CIVIL CARGO	
Interstate	*335,170*
Overseas	*158,556*
Latin America & Caribbean	74,417
Transpacific	84,139
Foreign	*2,564,538*
North America	24,566
Latin America & Caribbean	103,965
Transpacific	376,204
Transatlantic	2,059,803
Total Civil Cargo	$ 3,058,264
Total, passenger and cargo	$19,403,305

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The ten trunklines comprising the Joint Intervenors accounted for $10,686,088 of the total of $12,015,846 in interstate passenger revenues, and of this amount one carrier—United—generated $5,604,938, or 52 percent.[45] The balance in the interstate passenger charter field was composed of $833,603 for the local service carriers and $496,155 for the all-cargo carriers. Of the overseas passenger total, $891,548 was developed by the combination carriers to $7,360 for the all-cargo carriers, while the foreign passenger charter revenues were divided $169,100 for the all-cargo carriers

[45] The remaining trunk, Northeast Airlines, was not included. However, in 1963 Northeast had only $146,000 in passenger charter business and none in freight charters as against overall transport revenues of $6.86 million. CAB, *Air Carrier Financial Statistics.*

and $3,261,187 for the combination carriers. The all-cargo carriers produced $227,190 of the $335,170 earned from interstate civil cargo charters and all of the $158,556 in overseas cargo charters. Foreign cargo charters were also dominated by the all-cargo carriers which developed $2,214,129 from this source to $350,409 for the combination carriers.

The comparative insignificance of civil passenger and cargo charters for the scheduled carriers is best illustrated by relating the revenues received to the overall transport revenues of the carriers involved. The Joint Intervenors claim for 1963 domestic civil charter revenues of $9,953,000, about four-tenths of 1 percent of their total transport revenues of roughly $2.4 billion. In foreign and overseas operations for the same year the ratio ranged around 1 percent or less for the individual carriers, with a high of 2.4 percent for Pan American's Latin American division. Included in the foregoing tabulation are reported civil charter revenues of $838,351 for local service carriers as

contrasted to 1963 overall transport revenues for the local service industry of $156,689,000 (exclusive of an additional $68 million in subsidy). And the three all-cargo carriers supplying data—Airlift International, Flying Tiger, and Seaboard—reported total civil charter revenues of $3,272,490, roughly 4 percent of their total system revenues in 1963 of $83.2 million. Seaboard, which strongly opposes any competition from supplementals for transatlantic civil cargo charters, developed $755,520 from this source, which represents less than 3 percent of its 1963 total transport revenues of $26,552,000.

Even if the comparison is made on the basis of *all* contract and charter revenues—passenger and cargo, military and civil—the result is not changed materially and no significant growth trend for charter operations of the scheduled carriers is evident. While charter revenues as a percent of total transport revenues have progressively increased for the supplementals from 65.1 percent in 1959 to 93.2 percent in 1963, they have remained static for the domestic trunks—0.4 percent in 1959 and 0.5 percent in 1963. The same is true for the international and territorial combination carriers (5.4 percent in 1959 and 5.8 percent in 1963), and the charter revenues of local service carriers as a percentage of their total transport revenues declined from 2.5 percent in 1959 to 1 percent in 1963. For the all-cargo carriers, the percentage rose in 1962 to 86.8 percent (domestic) and 59.2 percent (international and territorial) but declined to 76.2 percent and 48.4 percent, respectively, in 1963.[46]

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THE FUTURE FOR TRADITIONAL CHARTER SERVICE

Historic data concerning traffic and participation have a significant bearing on future market potential, but they do

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[46] CAB *Handbook of Airline Statistics and Air Carrier Analytical Charts and Summaries.* The above percentages for all-cargo carriers are not representative of their civilian activities since, so far as appears from this record, the bulk of their charter revenues are obtained from military rather than civil operations. There is a further distortion by reason of the type of data included. The 1963 totals, for example, include substantial revenues for AAXICO, now a supplemental air carrier, and for Slick and Aerovias Sud Americana, air carriers which did not furnish information or otherwise participate in this proceeding.

not provide the exclusive or necessarily the most important basis for resolving these questions. There are numerous other and often contradictory considerations to be assessed in reaching the ultimate judgment.

The substantial and valuable role of the supplemental air carriers in providing passenger and cargo service for the Department of Defense cannot be seriously disputed, and no party has undertaken to do so on this record. Their past contribution in fulfilling day to day military requirements, as well as their response to emergency situations exemplified by the Berlin blockade, the Korean war, and the Lebanon crisis, have all been chronicled in detail and need no reiteration.[47] The supplementals have provided and continue to provide a sizeable and flexible reservoir of trained personnel and equipment, fully committed to the purposes of national defense. In view of the worldwide nature of this country's international commitments, and with the existing state of political upheaval and unrest, notably in Southeast Asia and the Caribbean, there is every indication of a strong continuing need for the services of the supplemental air carriers to meet present and future defense requirements.

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Similarly, there is no real argument with the proposition that the traditional planeload passenger and cargo charter operations domestically between the 48 contiguous states by the presently operating and qualified supplementals

[47] *Large Irregular Air Carrier Investigation*, 22 C. A. B. 838, 860 (1955); S. Rep. No. 688, 87th Cong., 1st Sess. (1961), to accompany S. 1969, p. 21; H. R. Rep. No. 1177, 87th Cong., 1st Sess. (1961), to accompany H. R. 7318, p. 16.

serve a useful public purpose responsive to public need. By their past charter operations the supplementals have earned their niche as an established part of the domestic air transportation system. Their domestic charter operations have shown substantial growth, particularly since the enactment of Public Law 87-528 and the termination of all individual sales authority, and the future charter potential for the supplementals within these limitations is conceded. Indeed, the Joint Intervenors, in urging restriction of any award for the supplemental air carriers to traditional planeload charters operated domestically or to transborder points, contend that there is a vast reservoir of underdeveloped affinity group charter business available in the United States. To this end they presented an estimate purporting to show that members of national charter-worthy organizations and their families alone represent a group charter potential of some 300 million people. While this forecast is suspect in technique and unreliable as a quantitative measurement of the probable market, it does indicate a sizeable source of charter traffic that has not been fully exploited by either the supplementals or the certificated route carriers.

Turning to overseas and foreign charter operations, the past provides a less informative guide to the future. In the area of civil passenger charters across the Atlantic, which are not in issue here, the certificated route carriers in recent years have had intense competition from the

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foreign air carriers and the supplementals for charter business; yet the result has been that during this period both scheduled and charter traffic have grown substantially.

(10051, 10052)

With this exception, however, no parallel situation exists in which to measure as precisely the probable future development under comparable competitive conditions.[48]

There are wide differences in the relative size of overseas and foreign markets as shown by past air traffic. The largest—the transatlantic—had 2.9 million passengers in 1963, followed by Central America and the Caribbean (2.4 million); the transpacific, composed of Asian and Oceania countries (600,000); and South America (418,000). The West Coast-Hawaii and principal U.S.-San Juan markets, which the Joint Intervenors would withhold from the supplementals, are sizeable ones, accounting for 1963

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O & D passengers totaling 645,000 and 1.2 million, respectively. In terms of the number of passenger charters

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[48] The more salient facts concerning the transatlantic passenger charters can be briefly noted. Both scheduled service traffic and charter traffic on the North Atlantic have shown strong growth patterns, and while TWA and Pan American have shared in the scheduled traffic growth, their participation in charter traffic has been static or dwindling. Thus scheduled traffic of the U.S. and foreign air carriers rose from about 1.7 million passengers in 1961 to 2.2 million in 1963, or approximately 31 percent, with the participation of Pan American increasing from 403,602 passengers to 539,015 and that of TWA from 207,630 passengers to 359,143. Although total charter traffic increased by some 97 percent, or three times as fast (148,366 in 1961 to 292,352 in 1963), Pan American's charter passengers declined from 22,490 to 16,014 and TWA's increased only slightly from 11,452 to 12,415. Percentage participation in charter traffic for foreign air carriers increased from 28 percent in 1957 to 77 percent in 1962; that of Pan American and TWA decreased from 27 percent to 5 percent; and there was a decrease from 45 percent to 18 percent for the so-called Part 295 carriers (including supplementals). It is significant that the gains in total market size have persisted notwithstanding the introduction of economy fares in 1958 and the April 1964 modifications that effected decreases of up to 20 percent in fares for both first-class and economy service.

operated in the various areas, the breakdown for 1963 is shown below:[49]

1963

	Applicants	Joint Intervenors	All Cargo	Foreign Flag	Total
Transatlantic	301	226	45	2,307	2,879
Caribbean, Central America, Bermuda	14	478	21	N.A.	513
South America	—	21	—	N.A.	21
U.S.-Puerto Rico	—	21	1	N.A.	22
U.S.-Honolulu	65	67	14	N.A.	146
U.S.-North Pacific	12	4	—	N.A.	16
U.S.-South Pacific	62	2	4	N.A.	68
U.S.-Alaska	1	5	3	N.A.	8

It is evident from a glance at the tabulation that except for their transatlantic operations the charter flights flown by the supplementals were sparse. By the same token, those of the Joint Intervenors were, for the most part negligible, considering their established identity in the markets and the volume of their individual services.

There are, of course, a host of considerations peculiar to operations abroad that tend to inhibit air service development, not the least of which are problems experienced in obtaining landing rights, the restrictionist tendencies of

[49] Exhibit JI-1110. All 62 U.S.-South Pacific flights under the "Applicants" column were mixed cargo and passenger flights performed by World under contract with Western Electric Co. Charter flights in 1961 and 1962 do not indicate material differences from 1963, but they do reflect the sharply declining participation of Pan American and TWA and the steady rise in the share of the foreign air carriers in North Atlantic charters.

particular foreign countries, the volatility of local political situations, competition from foreign air carriers, and the inadequacy of tourist facilities when judged by American standards. Such considerations are mainly in the realm of the imponderable and they are not of the sort that the Board generally has given decisive weight in determining whether to certificate U. S. flag services. For example, the fact that landing rights may not be in hand has not deterred authorization of services otherwise found required by the public convenience and necessity; and the existence of foreign competition is not to be relied upon exclusively to provide the benefits of competition contemplated by the Act.[50]

The record supports the conclusion that, despite these difficulties, the failure of international charter transportation to develop substantially in areas other than the transatlantic may be due as much to lack of aggressive promotion as to any of the foregoing factors or the historic thinness of the traffic in given markets. However the situation is viewed, the essential fact is that the certificated route carriers are not, and cannot be expected to be, vigorous exponents of charter service. Their primary responsibilities and most lucrative sources of revenue lie with the scheduled services. Although substantial money and effort go into charter programs from time to time, no separate charter divisions are maintained nor do these carriers assign aircraft exclusively to charter service. As

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[50] See *e.g.*, *North Atlantic Routes*, 6 C.A.B. 319, 322 (1945); *Panagra Petitions*, 9 C.A.B. 325, 328 (1948); *Latin American Air Freight Case*, 16 C.A.B. 107, 112 (1952); *Transatlantic Cargo Case*, 21 C.A.B. 671, 684 (1954); and *Large Irregular Air Carrier Investigation*, 32 C.A.B. 856, 867 (1961).

was candidly stated by Mr. Costello, a witness on the domestic issues for the Joint Intervenors, the certificated

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route carriers as a group are not charter specialists and they do not conceive charter movements as their primary role.[51] The testimony of Mr. Montgomery, the Joint Intervenors' witness on overseas and foreign operations, was much to the same effect. With some possible exceptions, a prevailing Pan American policy in the past, if not tantamount to active discouragement of charter operations, has been to sell them as a last resort when its other and more rewarding services fail to satisfy.[52]

The experience of the transatlantic remains as the prime example of what can be accomplished in promoting charter development.[53] There the introduction of group fares,

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[51] Tr. 755-56.

[52] See *e.g.*, Tr. 511-518. From time to time Pan American has published advertisements extolling the virtues of its economy services in comparison to charters (World 314). While these advertisements may have some purpose in relieving public misconceptions, they clearly carry the inference that Pan American's scheduled services are superior to all charters, including perforce its own. According to press reports, during the pendency of this case, Pan American has increased its transatlantic capacity substantially, an announced purpose being to aid in the solution of the balance of payments problem by promoting foreign travel to the U.S.

[53] This is not to suggest that even now the need in this area is being fulfilled; that question is at issue in the *Reopened Transatlantic Charter Investigation*, Docket 11908 *et al.* As far as this record is concerned, there is evidence of growing passenger resistance to the use of nonjet aircraft on the longer overseas and foreign flights. Several tour operators testified concerning their inability to book jet equipment for areas such as the Caribbean and

which the entrenched carriers foresaw as the answer to group charter movements, admittedly have not served that purpose. The Joint Intervenors correctly point to many differences between the transatlantic market and other areas of the world which might give rise to different results if charter specialists are certificated. Principal among

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them are the higher levels of historic traffic in the transatlantic than elsewhere; the more pronounced ethnic ties between Europe and the U. S., which are responsible for a significant portion of the transatlantic charter traffic; and the extreme seasonal peak across the Atlantic which intensifies demand over a relatively short period. These considerations may well mean that traffic development across the Atlantic could not be fully duplicated in other markets, either as to market size or the rapidity of growth, and that the same degree of competition may not be warranted. It has not been demonstrated, however, that they detract significantly from the basic lesson to be learned, which is that international scheduled services and group charter movements can grow and prosper side by side, given the stimulus of competition.

In large measure the future for charter service is interwoven with the prospects for air transportation development generally. Although there are differences between individual carriers and classes of carriers, the domestic and international certificated route carriers generally have

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across the Pacific, but particularly in the transatlantic market. In 1961 Pan American declined some 455 transatlantic charter requests, virtually all for lack of equipment. As might be expected, the bulk of the requests were in the May-September period, the peak season.

experienced unprecedented traffic growth and profits. An all-time peak of 58.5 billion revenue passenger-miles were flown during calendar year 1964. Between the years ending September 30, 1961 and 1964, their total operating revenues rose from $2.9 billion to over $4 billion and their operating profit position changed from an operating loss of $16 million to a record operating profit of $350 million in 1964. Also pertinent in a broad sense are the general economic indicators which must play a part in stimulating travel. The picture apparent from the record, both in the U. S. and abroad, is clearly one of constantly expanding population,

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burgeoning economic development, and trends in other respects favorable to continuing air travel growth.

Perhaps the two most significant keys to realization of a substantial expansion of charter services and air transportation services generally are (1) maintaining, and increasing where possible, the low cost advantage of particular forms of air travel, an advantage that is now characteristic of charter service, and (2) fuller exploitation of pleasure travel. The average American today is more affluent, with more leisure time and greater discretionary income potentially available for travel, than ever before. American families as a unit are sharing in this development, as illustrated by the fact that the percentage of U.S. households having income in excess of $7,000 has grown from 14.3 percent in 1955 to 30.4 percent in 1963. With the typical pyramiding of U.S. individual income, which places the largest proportions in the lower income brackets, reductions in air fares, or even maintenance of existing fare levels while income rises, are bound to open up previously untapped sources of additional traffic.

(10056, 10057)

There is a continuing surge of interest in travel generally by both U.S. residents and foreign citizens, with no significant signs of a slackening trend in the foreseeable future. Passenger use of air services generally is at an all-time high. Expenditures by U.S. residents for foreign travel have increased from $1.4 billion in 1954 to $3.2 billion in 1963, and the number of passports issued and renewed in the same period have more than doubled from 452,049 to 1,055,504, with a further increase to over 1.2 million expected during fiscal year 1965. At the same time, the

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number of temporary visitors to the U.S. from foreign countries increased from 457,248 in 1959 to 875,711 in 1963.[54] This latter market should be a prime area for concentration, not only for the resulting economic benefit to American carriers, but also because of the salutary effect that increased travel by foreign citizens to the U.S. can have on the balance of payments problem.

Notwithstanding the tremendous expansion of air transportation, there are still vast areas for future development. Domestically, the automobile remains the principal mode of transportation on trips over 100 miles; in fact, the percentage of Americans using the automobile for such journeys rose from 55 percent in 1955 to 65 percent in 1962. Even more directly in point are the statistics showing that, although travel generally is increasing, 71 percent of

[54] By area, the increases were as follows: Australia and Oceania countries, 20,425 to 34,595 (69.4 percent); Asia (Japan, Hong Kong, and the Philippines), 13,742 to 35,631 (159.3 percent); Europe, 171,657 to 326,454 (90.2 percent); and Latin America (Central and South America, the Caribbean), 251,424 to 479,031 (90.5 percent).

all Americans have never traveled domestically by air. Of the 29 percent that do use air travel about 86 percent represent business travel, 5 percent travel for personal reasons, and only 9 percent are on purely pleasure trips. Further, there is no persuasive reason to suppose that the "huge untapped volume of affinity group charter business" [55] which the Joint Intervenors foresee for domestic development by the supplementals could not, at least in part, be equally exploited for overseas and foreign travel.

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In the field of international civil cargo charters, there is a comparative paucity of information on which to evaluate the future. U.S. exports by air to the primary areas of the world continue at a high level, reaching in 1963 a total weight of 218.6 million pounds and an aggregate value exceeding $1 billion. While economic conditions generally are favorable for the continued growth of cargo movements, historically the part played by planeload cargo charters has not been large. Experience across the North Atlantic, which was offered as typical, shows that, although the capacity of modern cargo aircraft ranges upwards of 75,000 pounds, 65 percent of the freight shipments are less than 100 kilos in weight and that those exceeding 1,000 kilos represent no more than 2 to 3 percent of the total. Scheduled freight services are operated on a worldwide basis by combination, all-cargo, and foreign air carriers at relatively low load factors and with substantial unused capacity.

The number of civil cargo charters operated by supplemental air carriers in overseas and foreign markets and

[55] Exhibits JI-R-131 through R-139.

the revenues derived from this source in 1963 are set forth below:[56]

	Capitol	Southern	USOA	Vance	World	Zantop	Reys.
Transatlantic	2	—	—	—	—	—	$ 14,000
Pacific	4	2	—	—	—	—	119,125
Caribbean, Central America, Bermuda	—	218	1	—	—	2	184,699
South America	—	12	—	—	—	—	43,201
Puerto Rico	—	110	2	—	—	—	147,030
Virgin Islands	—	63	—	—	—	—	57,021
Hawaii	—	—	—	—	5	—	31,840
Alaska	1	—	—	2	—	—	11,289
TOTAL	7	405	3	2	5	2	$608,205

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Thus the only substantial participant has been Southern Air Transport, which provided such service to the Virgin Islands, Puerto Rico, and the Dominican Republic. At the same time, however, except for the transatlantic services of all-cargo operators, the planeload cargo charters of the scheduled carriers have been negligible in relation to their other transport activities.[57]

The full range of possible explanations for the failure of the market to develop more extensively and rapidly is

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[56] Excludes combination cargo and passenger flights (Exhibit JI-1014).

[57] In 1963 such flights of combination and all-cargo carriers accounted for revenues of only $158,556 in overseas markets and $2,564,538 in foreign air transportation. The transatlantic accounted for $2,059,803 of the latter total, $1.8 million by all-cargo carriers.

not apparent from the record. As far as participation by the supplementals is concerned, lack of demand and/or promotion, the absence of suitable equipment, and their concentration on military and other readily accessible and profitable activities may have all played a part. However, the die is now cast and those supplementals who are to survive have no alternative but to pursue every conceivable source of charter business available to them. And in spite of the comparative dearth of historic cargo charters by all carriers, the cargo market as a whole is exhibiting rapid and healthy growth.[58] If any of the applicants are to be authorized to operate civil passenger charters in overseas and foreign areas, then coextensive cargo authority is a

natural concomitance. Continued cargo charter authority offers the opportunity to expand a relatively underdeveloped market, it would provide applicants selected with a possible additional source of needed revenue, and it clearly would not cause material injury to existing carriers. The extent of its utility must depend on the vigor and success of sales and promotional efforts.[59]

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[58] For example, in the year ending January 31, 1965, freight revenue ton-miles for all certificated route carriers rose to 1.6 billion, an increase of 25.3 percent over the prior year—a 21.6 percent increase domestically and 32.8 percent for international and territorial operations. The growth in the latter category for the combination carriers was particularly striking, representing a 39.8 percent increase. Comparing the years ending September 30, total industry freight revenue ton-miles have risen some 64 percent in 1964 compared to 1961, about 70 percent for the certificated route carriers and 33 percent for the supplementals. CAB *Air Carrier Traffic Statistics.*

[59] The insistence of the intervenors on a presently demonstrated and unfulfilled demand for service before it is made available does

(10060, 10061)

All-Expense Tour Charters

Most of the intervenors vigorously oppose any authorization of all-expense tour charters in this proceeding on both legal and policy grounds. Since a determination of the legal issue adverse to the applicants would render discussion of the policy considerations unnecessary, the question of the Board's legal authority will be considered first.

The Board's Legal Power. The crux of the legal problem is whether all-expense tour charters, under which supplemental air carriers would charter aircraft to travel agents who in turn would fill the aircraft by selling all-expense tours to individual members of the public, constitute "charter trips in air transportation" and therefore supple-

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mental air transportation within the meaning of section 101(33) of the Act. The Board has not explicitly passed on the question, although it has determined that it possesses the power to authorize split, or less than planeload, charters.[60] In upholding the Board's action on split

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not square with their own apparent approach to cargo development. Pan American has invested some $111 million and TWA $40 million in convertible jet aircraft, not to meet existing cargo needs but in the expectation that traffic will be developed to fill them. As the witness for the Joint Intervenors explained it, such equipment is not being purchased by U.S. flag carriers "for today or tomorrow. They are being bought with the thought in mind you first make available a service and then go out to sell it." Testimony of Mr. Kellegher, Tr. 693.

[60] *Transatlantic Charter Investigation*, Orders E-20530 and 20531, served March 3, 1964, pp. 35-40 (Appendix A). In that case the Board also, for policy reasons, decided to deny requests for all-expense tour authority, although the matter is still open

charters, which was attacked on legal grounds similar to those now advanced, the Court set the framework for decision here in the following language:

> "We are unable to conclude that the term charter trips has a fixed meaning or that Congress intended to restrict the Board to a definition of one aircraft-one charter. We conclude Congress intended, although not without limits, that the Board should be free to evolve a definition in relation to such variable factors as changing needs and changing aircraft * * * We agree with the Board that the legislative history reveals that a prime concern of Congress was to maintain the integrity of the charter concept—to preserve the distinction between group and individually ticketed travel; within these limits it is for the Board to evolve reasonable definitions." [61]

Notwithstanding the broad latitude given the Board "to evolve reasonable definitions," the intervenors rely upon two principal lines of argument. First, it is contended that the legislative history of Public Law 87-528, which introduced the definition of supplemental air transportation,

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demonstrates that Congress itself determined that an all-expense tour charter to a travel agent selling individual

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pending final action by the President (*Id.* at pp. 31-34; Order E-20776, April 30, 1964). In addition, the Board in its proposal to authorize all-expense tour charters on an interim basis reached the "tentative conclusion" that it had the legal power to do so, but that proposal has been deferred (f.n. 30, *supra*).

[61] *American Airlines, et al.* v. *C.A.B.*, C.A.D.C. No. 18,590; *et al.*, decided March 4, 1965.

space to the general public would not be a "charter" within the statute because such an arrangement is tantamount to individually ticketed travel. In this respect, reliance is placed primarily on rejection by the House and the Congress of a Senate Commerce Committee print which would have defined "charter" specifically to include authorization for all-expense tour charters, and upon statements of both House and Senate managers favoring the intervenors' position.

The second argument is directed essentially to the issues and the evidence. The intervenors attach significance to the fact that the travel agents did not appear as a group in this proceeding and present evidence "as to how, when, and where all-expense tours would be performed, and their qualifications to provide such service." [62] As the Joint Intervenors correctly point out, in all-expense tour charters the main function of the supplemental air carrier would be to provide its aircraft at its published charter rate; the real principals would be the travel agents or tour operators who organize, promote, and sell the tours; and therefore the travel agents in all likelihood would be "indirect" air carriers who require either a certificate under section 401 or an exemption from the certification and other require-

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ments under section 101(3) of the Act.[63] Since there are no applications by travel agents for such authority before the Board in this proceeding, the precise identity and re-

[62] Joint Intervenors' brief to the Examiner, p. 6.

[63] Section 401 generally requires air carriers to obtain certificates which may be issued, after notice and hearing, upon Board findings that the public convenience and necessity so require and that the applicant is fit, willing, and able. Section 101(3), however, has a

sources of agents who would sell all-expense tours are unknown, and they did not appear here en masse to disclose their plans and areas of operation, the intervenors conclude that the Board is powerless to make the findings necessary to implement the all-expense tour program urged by the applicants.

Turning first to the statutory meaning of "charter," the official actions of the Senate and House committees processing the bill, the Conference Committee, and ultimately the Congress in enacting the bill do not support the intervenors' position. The version of the bill advocated by the Senate Commerce Committee and passed by the Senate contained a definition of charter which, while generally excluding individually ticketed service offered by an air carrier directly or through a travel agent from the term, made a specific exception for travel agent charters involving all-expense tours. The effect would have been to give supplemental air carriers the statutory right to conduct such charters, and the reason given for the exception was that tour travel "is a very different sort of service from individually tick-

eted transportation." [64] On the other hand, the bill passed by the House limited supplemental certificates to "charter trips" but did not define the term, with the House Committee reporting out the bill explaining that

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specific proviso for indirect air carriers which states "That the Board may by order relieve air carriers who are not directly engaged in the operation of aircraft in air transportation from the provisions of this Act to the extent and for such periods as may be in the public interest."

[64] S. Rep. No. 688 (Calendar No. 664), 87th Cong., 1st Sess. 14 (August 8, 1961).

(10064, 10065)

> "* * * authority to define charter services should be left, as at present, with the Board, subject to the limitations contained in the reported bill. This is a very difficult subject and any effort to freeze a definition of charter service into law could well lead to complications." [65]

The bill as it left the Conference Committee and as finally enacted adopted the House position (present section 101(33)) and the Conference Report contained no comment on the subject of the definition of charter.[66] The plain import of these various actions is not that the Congress specifically rejected any and all all-expense tour charters as legitimately a part of supplemental air transportation but that it meant precisely what it said in its ultimate enactment, *i.e.*, that the definition of "charter," including the question of whether all-expense tour charters could or should be authorized within the scope of the term, was to be left to the Board.

Some of the statements made by individual members of Congress during the course of the floor debates do indicate a different interpretation. Senator Monroney, a manager of the bill, did not comment on all-expense tours but indi-

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cated that the definition of charter was a matter for the Board's discretion.[67] However, three Senators who were on the Conference Committee did mention them and all

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[65] H. Rep. No. 1177, 87th Cong., 1st Sess. 11 (September 13, 1961).

[66] H. Rep. No. 1950, 87th Cong., 2nd Sess (June 28, 1962).

[67] Congressional Record—Senate, June 29, 1962, p. 11425.

their comments were to the effect that the Board did not have legal authority to define charters to include all-expense tours organized by travel agents.[68] Similar statements were made by two of the House managers of the bill and other representatives.[69]

Although these various remarks serve to becloud the legislative history, they do not, as the Board has stated in a comparable situation, "affect the fact that as reported (and enacted), the law contained no definition of charter and placed no strictures or conditions on the Board respecting its construction." [70] The Court's action in affirming the Board's authority to permit split charters clearly supports the proposition that here, as in that situation, there is "no need to go beyond the legislative enactment to ascertain

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the extent of our [the Board's] latitude in construing the statutory term 'charter'." [71] It follows that the Board has ample legal authority to define charter to include all-expense

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[68] *Id.* at p. 11426 (Senator Cotton); p. 11427 (Senators Scott and Thurmond).

[69] *Id.* at pp. 11460-61 (Representative Williams); pp. 11461-62 (Representative Harris); p. 11462 (Representative Walter); and p. 11463 (Representative Collier). Typical are the remarks of Representative Harris:

> ". . . Travel agents, being agents for transportation services, rather than carriers themselves, have never been allowed to engage airplanes in their own name for their own account. Nor should they be allowed to. That is why the House objected to the proposal of the Senate including the 'all-expense tour' language. . . .
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> "The Senate . . . proposed to modify the established concept of charter in order to permit carriage, as charter, of 'a group on an all-expense paid tour.' . . ."

[70] *Charter Investigation, supra,* at pp. 38-39.

[71] *Id.* at pp. 39-40.

(10066, 10067)

tour charters to travel agents, provided that in doing so it preserves the fundamental distinction between group carriage and individually ticketed travel.[72]

The various other contentions of the intervenors are without merit. Their net effect would be to impose standards of proof that are clearly not necessary or justified. The classic technique which the Board has used in authorizing indirect air carrier operations is by exemption pursuant to section 101(3) of the Act. This was the method employed in establishing the extensive airfreight forwarder industry, and the Board's power to proceed in this manner has been judicially sustained.[73]

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Here, as in the case of the initial authorization of airfreight forwarders, there is no foundation in experience

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[72] It should be pointed out that Board action in the past refusing to permit charters to travel agents has been based on policy rather than legal grounds. Further, the Board has ample precedent by analogy to surface transportation for permitting all-expense tours through travel agents, for in that field they have been held to be sufficiently cohesive to qualify as "charters" under the Motor Carrier Act. 49 M.C.C. 491 (1949), 52 M.C.C. 373 (1951), 54 M.C.C. 291 (1952), reversed sub nom. *National Bus Traffic Association, et al.* v. *United States, et al.*, 122 F. Supp. 876 (N.J. 1954); and 63 M.C.C. 493 (1955), affirmed *National Bus Traffic Association, Inc., et al.* v. *United States, et al.*, 143 F. Supp. 689 (N.J. 1956), aff'd *per curiam*, 352 U.S. 1020 (1957). The three-judge District Court deciding the *Tauck* case relied in part on the fact that all-expense tour charters were long-established in the motor carrier field before passage of the Motor Carrier Act and upon the absence of any legislative history evidencing an intention to prohibit them, factors that are not present under the Federal Aviation Act. However, a fair reading of the decision does not indicate that these were the decisive considerations.

[73] *Air Freight Forwarder Case*, 9 C.A.B. 473 (1948), aff'd *American Airlines, Inc.* v. *C.A.B.*, 178 F.2d 903 (C.A. 7, 1949).

by which to judge completely the full potential and utility of all-expense tour charters. If authorized, they will be largely promotional and experimental, and findings concerning need for authorizing the participation of travel agents and the points or areas for operation of such charters necessarily must be made in general terms.[74] The Board need not find particular travel agents qualified in the certificate sense of fitness, willingness, and ability, which is not a statutory standard for exercising the exemption power; indeed, the plain language of 101(3) does not even require that the findings necessary to support an exemption, which are those of "public interest," must be made upon an evidentiary record developed after notice and hearing. As later appears in more detail, the record as a whole

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[74] In the *Forwarder Case, id.*, the Board said,

> "The basic issue, whether air freight forwarders should be permitted to operate, presents many difficult and perplexing questions on which the parties have taken strongly conflicting positions * * * Much uncertainty is injected into the problem before us by the fact that no empirical basis exists for a determination of the important issues involved. There are no statistical data available relating to actual air freight forwarder operations and many of the problems before us can be solved only on the basis of actual indirect air carrier operating experience of the type here proposed." (p. 498).

Again, on the question of scope of authority:

> "On the basis of the evidence in the record herein it would be extremely difficult and perhaps impossible to fix a route pattern, either by points or areas, in the usual sense contemplated by section 401 of the Act. Although need has been demonstrated for air forwarding service to and from certain areas and between certain points, any attempt to fix an overall pattern is premature in view of the lack of definitive data, due largely to the fact that the air forwarding industry, on a common carrier basis, has not existed up to the present time." (p. 499).

will support the conclusions that a limited experiment with all-expense tour charters by some of the applicants is required by the public convenience and necessity and that an exemption from the certificate and other requirements of the Act for travel agents, to the extent necessary to permit their participation in such a program, is in the public interest. No more is required for a lawful exercise of the Board's power.

Existing All-Expense Tour Services. The proposals in this case for all-expense tours to travel agents would introduce an innovation into the American air transportation system. While all-expense tours are now promoted and sold in conjunction with U. S. scheduled air services, none has been developed through the vehicle of charters to travel agents who in turn market the tours directly to the public, and none offers the price savings on the cost of air transportation that could be effected by assessing the individual traveler basically only his pro rata cost of the charter.

The present all-expense tour services, which are all tied to the higher individual or group scheduled air fares, are of two general types. The first is the advertised all-expense air tour. As it exists under applicable IATA resolutions, the all-expense air tour is a round or circle trip arranged and promoted with tour literature. In addition to the point-to-point air transportation, it must provide sleeping or hotel accommodations for the duration of the tour and may include other ground services such as transfers, sightseeing, car rentals, etc. The ground features must amount to not less than 20 percent of the air fare or $15, whichever is greater, and the price for the ground arrangements must appear in the tour literature so that the customer may com-

pare the cost of various tour packages. With some differences, the same general type of tour is available domestically.[75]

The second type is the domestic independent air tour which has no counterpart internationally. In this instance, no tour folder is required and the tour is tailored to the desires of the individual traveler, provided that the ground arrangements include the same elements as the advertised all-expense air tour and that the tour includes at least two noncontiguous cities. A minimum dollar requirement is also established for the ground features, generally 15 percent of the air fare. Both domestically and internationally, travel agents are paid a 10 percent commission on the air fare where a tour is involved as opposed to the usual 5 percent and 7 percent for domestic and international point-to-point air travel, respectively.[76]

Considerable time, effort, and money are devoted to the development of all-expense tours in both domestic and international air transportation. Individual carriers, of course, utilize their own sales staffs, company-produced literature, and the services of agents to promote tours as

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[75] The governing ATC resolution, like that of IATA, requires publication of a tour folder that makes full disclosure as to ground services and price. However, unlike the IATA carriers, the domestic carriers are prohibited from bearing any costs in connection with the preparation and printing of tour folders, although they do utilize their own promotional materials.

[76] It would appear that, at least in the international field, retail agents derive roughly an additional 10 percent on the ground services from the entities performing them or from the tour operator producing the package. The tour operator profits primarily from the volume arrangements he makes with respect to ground services for which he is in effect a wholesaler, with the right to markup the cost of the ground package as may be necessary.

well as other types of travel. An additional sales weapon is the tour manual. The most significant of these is the consolidated tour manual, a 353-page publication first developed in 1961 and used by all domestic trunkline carriers except American. It lists over 300 tours of all descriptions available to a great variety of domestic points and some foreign areas such as the Caribbean, Bermuda, the Bahamas, Mexico, and Central America, and the total distribution of each edition approximates 10,000 copies, including copies sent to the some 5500 approved travel agent locations in the United States. Internationally, the carriers are free to participate in the development, printing, and purchase of the tour folders for the tour packages that are ultimately to be retailed. An international tour operator is required to print a minimum of 5,000 copies of a tour folder, but usually printing runs to 50,000 copies or more with worldwide distribution. In the case of Pan American, for example, distribution may be made to as many as 15,000 sales outlets.[77]

While the facts demonstrate that the all-expense tour market as it exists today is far from a neglected source of

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[77] The dollars expended for promoting tours, at least by domestic carriers, appear to run higher than for general point-to-point air transportation. The domestic carrier component of the Joint Intervenors estimated that for 1963 about 6 percent of total all-expense tour revenues were spent in promoting tours whereas total domestic advertising and publicity expense ran about 3 percent of total passenger revenues. The fragmentary information that is available indicates that the dollar amounts expended internationally for the same purpose are more modest. For example, in 1963 they totaled for Pan American $258,000 (Hawaii, Alaska, and Pacific) and $357,000 (Latin America); Northwest, $93,000 (Hawaii, Alaska, and the Pacific); United, $100,000 (Hawaii); Braniff, $99,000 (Latin America); American, $8,000 (Mexico); and Western, $200,000 (Mexico).

traffic, it is clearly apparent that such traffic is nowhere near its true potential. It is to be remembered that of the

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29 percent of Americans that fly domestically, only 9 percent are on purely pleasure trips whatever the mode, type, or class of air travel they use. Utilizing the best estimate available, 1963 sales by travel agents amounted to some $611 million for the domestic Joint Intervenors (excluding Hawaii and Alaska), with but 9 percent, or $56 million, representing the total volume of all-expense tour sales. Internationally, for the same year the relative percentage dollar volume of all-expense tours for even the most dependent carrier did not exceed about 15 percent.[78]

Existing all-expense tours, like those which might be offered and sold on a charter basis through travel agents, have appealing features for passengers of a particular temperament, including relative economy of price, the payment of one sum for the entire package, the companionship of likeminded tourists, relief from the burdensome detail of reservations, avoidance of baggage transfers, etc. In the international field there are additional advantages, such as minimizing the necessity for coping with the often cumber-

[78] To illustrate, the amounts received from the carriage of all-expense tour passengers and the relative percentage of relative passenger revenue were as follows: Pan American, $17.9 million, or 13.6 percent of passenger revenues (Pacific and Hawaii), $10.3 million, or 8 percent (Latin America), and $153,000, or 3.5 percent (Alaska); Northwest, $2.67 million, or 7.6 percent (Pacific, Hawaii, and Alaska); and United, $5 million, or 15.1 percent (Hawaii). In the case of Pan American at least, a large proportion of this traffic—possibly as high as 50 percent—consists of "FIT" or foreign independent travel passengers who independently select pre-packaged tours or have them custom-built to their specifications. This traffic should not be materially affected by the all-expense tour charter.

some customs procedures and the difficulties of unfamiliar languages and currencies. Conceivably all-expense tour charters could stimulate additional tour passengers by offering some further cost advantage over present tours on the land portion because of block booking of the surface components of the tour, although theoretically at least these

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advantages are equally available today since they are not dependent on the manner in which the tour is marketed but upon the development of sufficient traffic to warrant volume discounts.

There is no way of ascertaining with certainty the full extent of reduced costs for the tour traveler that could be realized from the lower air fare, which is the real advantage of the all-expense tour charter. Much depends on considerations such as the level of the individual and charter rates, the type of equipment involved, and the class of scheduled air service to which the comparison is being made, as well as the more general factors of promotion and development. Even accepting all of these qualifications it seems clear that the price differential would be of sufficient importance, particularly on long haul operations, to develop substantial new traffic.[79] In view of the general affluence of the Ameri-

[79] Some examples of record based on existing air travel costs will illustrate the point. Assuming the use of jet equipment and the round trip cost, the difference between the pro rata charter rate and the lowest individual scheduled fare is about $148 between Los Angeles and New York, $65 between New York and Miami, and $14 between Los Angeles and Las Vegas. The Los Angeles-Tokyo all year round trip economy fare on the scheduled services is $783 compared to $356 for the pro rata jet charter (with no ferry mileage), a difference of $364. While the total cost of the entire package may still be large because of the constant level of the ground expense, the savings on the air fare alone are nonetheless signifi-

can society, the persistent economic growth both here and abroad, the prevailing propensity for travel generally, and the other factors previously considered that demonstrate a favorable climate for continued development of all air transportation services, there is little doubt that any sound program for exploiting the pleasure market by all-expense tour charters which offer the stimulus of lower fares faces a promising future.

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The British Experience. Inclusive tour (IT) charter services have long been established on the European continent where they have enjoyed wide public acceptance and have exhibited remarkable growth. While they are used extensively and successfully in countries such as Germany and Sweden, it is the analogy afforded by the British experience on which the applicants mainly rely and concerning which the evidence is most complete.[80]

Under the British system the fulfillment of air transportation needs is the responsibility of British Overseas Airways and British European Airways (BEA), the state-owned airline corporations, as supplemented by the privately owned independent British air carriers. The IT charters operated by the independents received their initial impetus in the early 1950's when removal of currency restrictions made pleasure travel abroad possible for the

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cant enough to dip further into the income strata for new customers. They are also particularly significant when related to the costs of a family vacation, since the American family now averages out to some 3.65 persons.

[80] The British term "inclusive tour" is for all practical purposes synonymous with "all-expense tour" in American parlance and the terms are hereafter used interchangeably.

British. During the balance of the decade the IT charters were of relatively little competitive significance to BEA, the state carrier primarily concerned. They were authorized by the Air Transport Advisory Council under guidelines established by the Minister of Civil Aviation and were generally confined to situations where there was no existing scheduled service or no material diversion would occur. The Council's actions were taken in consultation with BEA and a negative response from the latter normally meant denial of the permit application.

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The era of rapid development began with implementation of the Air Transport (Licensing) Act of 1960 which established the Air Transport Licensing Board (ATLB) as the aviation licensing body, subject to a right of appeal to the Minister of Aviation. Since 1960 the growth of IT charter passengers carried by the British carriers has been substantial and persistent, as shown by the table below:[81]

1960	199,000
1961	344,000
1962	386,000
1963	494,000
1964	700,000 (est.)

This growth has been accompanied by a similar expansion in the number of such passengers transported by foreign flag carriers, which have risen steadily from 50,000 in 1960 to 132,000 in 1961, 200,000 in 1962, 308,000 in 1963, and an

[81] The figures given as to both British and foreign flag traffic are for passengers outbound from Great Britain only and should be divided in half to arrive at the number of round trip passengers.

estimated 350,000 in 1964. The authorizations granted to foreign flag carriers apparently are issued by the Minister of Aviation solely on the basis of reciprocity, without hearing, and in a manner that reserves to them roughly 40 percent of any given market.[82]

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From the standpoint of the passenger the British IT's are not materially different from the all-expense tours previously discussed, which have their principal appeal in the lower fare, an all inclusive lump sum payment, and the relief from worrisome detail. The usual IT is of two weeks' duration and includes round trip point-to-point air transportation, city-airport-hotel surface transportation, some sightseeing, and hotel accommodations with meals. At least in the past, they have been operated by the independents with the older types of piston equipment at a level of passenger service roughly equivalent to the basic IATA economy service. Unlike the U. S.-foreign markets and some of the longer haul domestic movements in the U. S., there is no present indication of a marked passenger resistance to the use of other than pure jet equipment.[83]

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[82] Within the category of British carriers, IT charters are not operated solely by the independent airlines; they can be and are operated with ATLB approval by the British scheduled carriers between points which they serve on their scheduled services. Also, the scheduled carriers have an ITX or tour basing fare which allows them to carry IT passengers at a reduced rate on their regularly scheduled services without specific permission. The ITX fare came into more extensive use in 1959 when IATA permitted a substantial reduction in the rate level. Finally, there is a hybrid type of service in which the scheduled carriers may transport ITX passengers exclusively on given flights, also with ATLB permission.

[83] The average one-way distance for the British IT charter flight is in the neighborhood of 900 miles. They are generally operated

(10075, 10076)

There are basic differences between the British IT charter passengers and those using the more expensive scheduled services, particularly in terms of age, income level, and occupation. The typical IT charter passenger is from the working class, of lower to middle income, and considerably younger. In a word, the IT charter passenger is likely to be the young and budget-conscious traveler to whom price, and limited tour duration to meet business vacation periods, may become the vital considerations.

The overwhelming passenger preference has been for "stay-put" or "single centre" tours to the "sun spots," *i.e.*, vacation trips on which the principal purpose is not sight-

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seeing but to settle at basically one point to relax and enjoy the sun and the sea. Thus, the majority of the IT's take place in the 20-week peak May to October summer season and are to points in the warm climates, such as the Spanish Balearic Islands (notably Palma on Majorca) and other Spanish and Italian resort locations on the Mediterranean and Adriatic seas. As in the transatlantic passenger charter market, in recent years the season for IT charters has had a tendency to broaden. In addition, more extensive geographical coverage is being experienced because of the increased popularity of tours to other areas that include Portugal, Greece, Yugoslavia, and the Holy Land.

Brief mention should be made of the British regulatory system. Several types of licenses for IT charters are is-

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by the carriers on a "back to back" basis, often with more than one group aboard the airplane, so as to eliminate or at least minimize the ferry mileage that would otherwise be involved in one-way hauls and the positioning of aircraft for future movements.

sued varying from a single flight to flights over a number of years, with the most usual being a license for a series to be operated over one specific summer season. As a practical matter, an application for ATLB approval must be made 10 to 12 months prior to commencement of the flights, and the application must be joined in by both the operating carrier and the tour operator or operators concerned. Hearings are held before the ATLB, usually at the same time on all applications involving a common destination. Various economic data are considered, particularly those bearing on past market experience and the general issues of need and wasteful duplication or material diversion that may result from particular authorizations. The financial fitness of the operating carriers is scrutinized and there is a growing tendency to inquire into the same question as it relates to the tour organizer, although no specific condi-

tions are imposed in an effort to guarantee the financial responsibility of the latter. There is provision in the British law for ATLB sanctioned variations from the terms of licenses previously granted should they be warranted.

Unlike the American system of publicly filed and published tariffs, the price charged the tour operator by the air carrier for charter of its aircraft is a private, negotiated commercial arrangement.[84] In the licenses it grants the ATLB sets a minimum price that can be charged the passenger for the inclusive tour, which tends to become

[84] Because of this fact it is difficult to ascertain the cost differential for charters versus scheduled service. However, the witness from Caledonian did state, in speaking of the differences in air fares, that it would "be roughly 20 percent cheaper to take a charter holiday than a scheduled holiday." (Tr. 89).

the total IT package price. Almost without exception the price so established is the IATA fare floor, *i.e.*, the total charge to the passenger shall not be less than the lowest published IATA round trip fares between the points to be served on the day and at the time of flight.[85]

The tour operator (or a consortium of tour operators) is the real motivating force not only in the preapproval planning stages of the IT's but also in their subsequent promotion and sale. The functions of the carriers are restricted to furnishing the aircraft and related operating responsibilities. The carrier usually receives a down payment upon signing a contract with the tour operator and thereafter installment payments are made up to the time

of flight. The wholesalers employ the customary promotional tools, including descriptive brochures and perhaps some general advertising, and market the tours either through their own outlets or by using retail agents who receive a 10 percent commission. No commissions of any kind are paid by the operating carrier.

All factors considered, it is clear that the low cost British IT charters have been highly successful in opening up a sizeable new traffic market of persons not previously using air service, to the primary benefit of the low or middle income individual who would not otherwise fly. This is the firm opinion reached by the British regulatory authorities and other European bodies having occasion to

[85] A host of other details may be specified in the licenses issued, viz., frequencies, the period for operation of the IT charters, aircraft type and configuration, duration of stopovers where more than one "centre" or point is involved, etc.

deal with the subject.[86] It is also demonstrated by the uncontroverted testimony of the witness from Caledonian, a British independent carrier, who estimated that 25 to 40 percent of its IT passengers were first-time travelers.[87] And even the BEA witness for the Joint Intervenors expressed no disagreement with the proposition that the principal beneficiaries of the lower fares offered by "both the inclusive tours and the ITX fares, are those newly

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generated low income people who would not otherwise travel * * * ."[88] The ultimate conclusion to be reached was well put in a statement of an economic advisor to BEA when he wrote, in referring to the some 600,000 passengers carried on the inclusive tour charter service of the British private airlines in 1962:

> "* * * For the most part these were passengers who would not have travelled by air on normal scheduled services. They were persuaded to fly by the attractive prices and great convenience of the packaged holidays offered. The real importance of inclusive tour services to British civil aviation lies in the fact that

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[86] Illustrations can be found in the ICAO study of inclusive tour services in international air transport, statements of the British Air Transport Advisory Council in 1957 and 1958, and in the subsequent pronouncements of the ATLB.

[87] The same result often flows from types of charter services other than the all-expense tour. For example, it was the experience of World Airways in its 1963 Hawaiian charter program that about 40 percent of the participating passengers had not traveled by air previously. Also, in World's single entity sales incentive program for Chevrolet, 40 to 50 percent of the passengers had never flown before and about 70 percent had not been aboard a jet aircraft.

[88] Testimony of Mr. Collingwood, Tr. 1419.

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> a very large number of people have been converted into air travellers through the promotional efforts of the organizers of air tours. In this way, the financial and social boundaries of the air travel market have been greatly extended." [89]

Moreover, there has been no convincing showing that the IT charter development has had any material adverse impact upon the scheduled carriers. Expressions of opinion by British and European expert study groups and regulatory authorities concerned with the question range from the position that the IT's have not been necessarily harmful to the scheduled services to the conclusion that they have redounded affirmatively to the benefit of the scheduled carriers by serving as the forerunner of new scheduled services, by stimulating new traffic which ultimately returns as scheduled airlines business, and the like; none, however, has found them to have been unduly detrimental.[90]

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And the efforts of the Joint Intervenors to show significant injury to BEA from the competition of the independents

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[89] Statement of Stephen Wheatcroft, Exhibit W-605.

[90] Although the effect that the introduction of new travelers to air transportation through the IT charter will hold for the future is not precisely measurable, all carriers apparently would agree that at the minimum it is a likely source of future traffic that is to be cultivated. As the Joint Intervenors in the domestic field recognize, "* * * the domestic carriers look upon all-expense tours as a way to promote first-time travel to resort and tourist areas with the hope and expectation that the passenger will return to this location at a future date, utilizing the ordinary individually ticketed service of the carriers but not necessarily travelling on a formal tour program." (JI-2000, p. 3).

are not persuasive.[91] The current British Government, although acknowledging that the IT charter services may have had some effect on the scheduled carriers, has been unwilling to apply additional restrictions on the IT charters that might impede their continuing development.[92]

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[91] The Joint Intervenors construct this argument on the basis of a decline in BEA's traffic between London and resort points where it competes with independent IT charters, particularly London-Palma where BEA's tourist passengers declined 7 percent in 1964 from the prior year as compared to a substantial rise for the independent IT charter operators. However, when the total U.K.-Palma market as operated by the British and foreign carriers is considered, it shows that BEA's traffic has remained static while the total traffic for all carriers has shown constant and healthy growth. Whether BEA's declining participation is due to domestic and foreign competition or factors within its control is not apparent. In any event, when the Palma IT applications were acted upon by the British authorities for the 1965 summer season, the claims of injury by BEA were rejected with the finding that "* * * the grant of these licences would not of itself have a major detrimental effect on the scheduled services." (Exhibit JA-9, p. 6).

It should also be noted that the IT charter operations of the independents have not unduly affected BEA's ability to provide its air transportation services generally. Its total international passengers have risen steadily from 1.56 million in 1960 to 2.35 million in 1964, and its operating profit for the year ended March 31, 1964, reached a five-year high of 3,030,007 pounds. The contention that BEA could have effected lower rates on other parts of its system but for the IT charter competition of the independents is entirely speculative and without factual foundation in this record.

[92] Statement of Mr. Roy Jenkins. Parliamentary Debates (Hansard), House of Commons, Official Report, vol. 706, no. 59, cols. 1186-88, February 17, 1965. This statement is a reflection of the general European attitude favoring IT charters. Thus the 1964 report of the European Civil Aviation Conference study group states that one of its basic purposes was consideration of the principles that would govern such charters "with the object of establishing the maximum possible liberalization of this type of traffic * * *." (Exhibit JI-R-1152, p. 2).

The opposition of the intervenors to equating any favorable inferences from the British experience with the likely potential for American all-expense tour charter services is detailed and vigorous. The intervenors would divide the British history into two parts—before 1960 and post 1960. They do not quarrel with the success of the initial period for, they say, there was orderly regulation that confined IT charters within reasonable limits to essentially new and nondiversionary services. After 1960, however, the intervenors assert that there was a collapse of the regulatory process, with few, if any, brakes on IT charter services even over routes competitive with the scheduled services. They attribute this change to (1) virtually automatic and unlimited entry into the markets by foreign flag competitors, and (2) overly generous authorizations for British operators, granted on the theory that denials would not afford protection for the scheduled services but would simply drive the charter business to the foreign carriers.

According to the intervenors, the result has been material injury to the scheduled carriers, a contention already considered and rejected. From the standpoint of the public, they raise the specter of the uncontrolled travel agent free to prey upon the public with resultant carrier and tour operator failures, passenger strandings, and similar consequences. Finally, the intervenors allege that the IT charter traffic does not represent a new market which would not have otherwise traveled by air but one which the scheduled carriers themselves would have developed in due course.

None of these contentions detracts significantly from the demonstrated public appeal, utility, and promotional value

of the low cost British IT charter. The British admittedly have had difficulties occasioned by mounting foreign com-

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petition; however, this consideration does not go to the intrinsic worth of the IT charter but reflects a governmental problem to be solved by governmental means. Further, the implications of injury to the British traveler are exaggerated. So far as appears from this record, there has been only an occasional failure of a financially marginal British carrier and business failures of travel agents have been relatively rare. In any event, in view of the requirement for continuing fitness placed on supplemental air carriers by the Act and the Board's power to condition authority so as to assure travel agent financial responsibility, the Board has ample means to provide protection for the American public from any such eventualities.

Whether the present levels of popularity and extraordinary development of British IT travel would have been reached in time had the scheduled carriers been left to their own devices is entirely a speculative question to which there is no ready answer. As has been seen, the great preponderance of British and European opinion would indicate a negative response. However that may be, the facts are that the market is now established and flourishing and that the sparks which ignited the movement were the efforts of travel agents and the independent IT charter operators. At the very least, these operators provided the competitive spur that hastened the development of a service found useful and beneficial by the British public.[93] This

[93] This point was made by the ATLB in its decision authorizing increased capacity for the 1965 season in the Balearic Islands

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in itself is a substantial and persuasive element of the public interest.

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Split Charters

In contrast to the voluminous data concerning all-expense tour charters, there is little information of record with respect to split charters. No unanimity exists even among the applicants on the need for them or their usefulness, although a majority favors split charters as an adjunct to other charter authority which successful applicants may receive as the result of this proceeding. Also, there is a disparity of views on whether, if granted, the right to charter less than planeload movements should extend to one-third or one-half an aircraft or be described by some numerical limitation on the size of each participating group.

Actual operating experience with split charters has been very limited. Two supplemental air carriers—Capitol and Saturn—received such authority for traditional pro rata and single entity passenger charters in time for the 1964 transatlantic summer season as the result of the Board's decision in the *Transatlantic Charter Investigation.* However, split charters were flown only to Luxemburg by both carriers and to Brussels by Capitol. None was operated to the more popular destinations in England and France, since split charters are not recognized by IATA and the necessary landing or uplift rights could not be obtained.

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market, where it said: "The charter operators and their associated tour organizers have by their efforts developed a mass market which the scheduled services, left to themselves, would have taken much longer to develop." (Exhibit JA-5, p. 2).

In the *Charter Investigation* the Board determined that the vast increase in aircraft capacity has deprived many small affinity groups, otherwise charter-worthy, of the opportunity to participate in transatlantic travel because they are unable to fill an entire aircraft. As the Board recognized there, and as shown by this record, group fares generally limited to 25 passengers or more have not provided

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an effective substitute. The Board found no likelihood of significant adverse effect on the scheduled carriers and concluded that "we are unwilling to withhold from this part of the potential air transportation market the advantage of transatlantic charters solely because of increases in the size of equipment." [94]

The same reasoning fully supports a similar conclusion here. Split charter rights for pro rata and single entity charters are potentially a valuable type of authority which can be used by the supplementals to broaden the markets available to them and to increase their operating flexibility by combining their passenger loads. Such authority also benefits the public, and in the hands of the supplemental air carriers would not have any significant competitive impact on the passenger carriers. And if, as some of the intervenors contend, split charters prove to be of little practical utility, the scheduled carriers have nothing to fear from their authorization.

The more difficult question is the number of passenger groups which should be permitted to be carried aboard the same aircraft. In the *Charter Investigation* the Board

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[94] *Transatlantic Charter Investigation*, Orders E-20530 and 20531, March 3, 1964, Appendix A, p. 32.

imposed a two-group limitation. It noted that the supplementals were then using piston equipment across the Atlantic and that the split charter two-group limitation would involve individual groups of at least 40 passengers on the basis of that equipment. A realistic assessment of the

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question on this record favors permitting three groups per aircraft, with the proviso that each group shall be comprised of 40 passengers or more. As a practical matter, this would mean continuation of planeload movements when the smaller piston aircraft are used. However, three of the operating supplementals who are applicants here now possess long range, high density pure jets which can seat upwards of 200 passengers in economy configurations, with more jet aircraft being received or on order. A three-group limitation with the additional provision for minimum group size would be consistent with all of the objectives which the Board sought to achieve by its decision in the *Charter Investigation* and would, at the same time, give due recognition to the fact that the era of the pure jet has, in fact, arrived for at least some of the supplemental air carriers.[95]

While some arguments can be made for also permitting split charters involving use of the same aircraft by dif-

[95] On brief the Joint Intervenors intimate that the Court's decision in the *American* case (f.n. 73, *supra*) might somehow prevent the Board from increasing the number of participating groups from two to three. While it is true that the matter before the Court involved only the charter of one-half an aircraft, there is nothing in the Court's decision which would preclude the Board from adopting a three-group limitation upon appropriate findings that such action falls within the charter concept and is required by the public convenience and necessity.

ferent tour groups formed by different tour operators, the possible benefits are outweighed by the disadvantages. As indicated, the essence of the decision in the *Charter Investigation* on the split charter issue was concern for the smaller affinity passenger groups which, with charters limited to planeload movements, were being substantially disadvantaged because of the great increase in aircraft size. In all-expense tour charters, however, there is no affinity requirement; the travel agent may sell tours indiscriminately to individual members of the public who have no necessary relationship to each other except for their

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desire to take the tour. Thus the fundamental justification for split charters disappears when related to all-expense tour charters. Further, although there is no indication that the impact would be crippling in any meaningful sense, it is true that such an extension of the split charter concept would increase the diversionary consequences, particularly for those carriers most heavily dependent upon resort type traffic. In addition, permitting the participation of several agents and of different groups of tourists on the same aircraft movement certainly would be more conducive to sales of individual travel in the guise of charters than would be true with planeload operations.

Split charters do not now exist in the cargo field and no convincing reasons have been advanced in their favor. If restricted to planeload movements, cargo charters are basically nondiversionary, for little has been accomplished in this area, and penetration by the supplementals would represent successful exploitation of what is now a minor market. Splitting the loads to be carried, however, could

materially increase their significance, particularly in the domestic field where concerted use of the smaller transport aircraft would reduce the required size of individual shipments with some effect upon the scheduled all-cargo services. In addition, it is likely that the primary impact would fall on the all-cargo carriers which as a group have not shared proportionately the recent prosperity of the combination passenger-cargo carriers and legitimately may claim more reason for protection.[96] Since the possibilities

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for real utility of split charters have been shown only as to the passenger field, the balance lies against their extension to cargo movements.[97]

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[96] For the year ended September 30, 1964, two of the three domestic all-cargo carriers showed net losses before special items. Airlift International had a loss of $875,000 and Slick Airways a loss of $301,000 while the Flying Tiger Line showed a profit of $982,000. In international and territorial operations Seaboard World Airlines and Airlift International had net income before special items of $2,810,000 and $240,000, respectively, while Aerovias Sud Americana (not presently operating) experienced a loss of $425,000. CAB *Air Carrier Financial Statistics.*

[97] On brief the Bureau opposes the grant of any split charter authority, pointing to difficulties which might be experienced in obtaining charterers with compatible space requirements, destinations, etc., those stemming from a failure of one charter group to honor commitments, and the creation of an atmosphere possibly conducive to violations. These considerations are present in varying degrees with respect to all charter operations, and many are controllable as a matter of business judgment or through the imposition of appropriate restrictions. In any event, there is no evidentiary basis for supposing that they would reach unmanageable proportions with respect to split charters. In order to alleviate some of these problems, the Bureau suggests as an alternative the possibility of permitting two or more groups to combine for chartering an aircraft, with a requirement that the charter stand or fall as a unit. This approach would reduce the carriers' flexibility,

IMPACT ON THE CERTIFICATED ROUTE CARRIERS

By the nature of things, this case permits little in the way of specifics concerning the precise competitive effects of the proposed continuation and liberalization of supplemental air carrier authority. No empirical basis exists for complete judgment, there are few concrete proposals by the applicants, and little is known concerning such elements as point pairs to be served, predicted levels of operations, frequencies to be operated, prices to be charged, or equipment to be utilized.

Despite these difficulties, two efforts were made to forecast the probable future civil charter market, one by the Joint Applicants[98] and the other by the Bureau. The Joint Applicants, relying principally on managerial judgment, confined themselves to a prediction concerning future civil

charter passenger revenues for the supplemental industry. Working from an assumed 1965 passenger revenue level of $23.6 million with no change in present authority, for a future year they forecast total civil charter passenger revenues for the supplementals of $26 million, allowing a 10 percent increase for permanent certification alone; with an additional 40 percent if both permanent certificates and all-expense tour charter authority are granted, the total reaches $36.5 million; and finally, there is a third forecast of $39 million, representing 50 percent above the level of

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and to the extent that the Bureau's concern reflects a practical problem, there is nothing to prevent the carrier from negotiating and entering into commitments only on this basis.

[98] American Flyers, Capitol, Modern, ONA, Saturn, Southern, TIA, and Zantop.

permanent certificates alone if permanent certificates, all-expense tour charter authority, and split charter authority are granted.

On the other hand, the Bureau developed its forecast on the basis of supplemental air carrier participation in the total 1963 charter market plus allowances for normal growth and for stimulation that would result from split charter and all-expense tour charter authority, the latter largely predicated on the European experience. In this way the Bureau arrived at total supplemental civil passenger charter revenues (with all-expense tour and split charter authority) of $19,140,000 for 1965 and $30,270,000 for 1967. Adding civil charter cargo revenues of $2,596,000 in 1965 and $3,294,000 in 1967 the Bureau's forecast of the portion of the total civil charter market available to the supplementals aggregates $21,736,000 and $33,564,000 for 1965 and 1967, respectively.[99]

While there are substantial areas of pure judgment involved in each forecast, they represent the most reliable data of record. The Bureau's estimate is not only within the realm of reasonableness but it may well be overly con-

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servative. The civil contract and charter revenues of the supplementals already attained a level of $25,240,000 in the year ended September 30, 1964 without the stimulus of permanent certification, all-expense tour charter authority,

[99] The Bureau also predicted that total military cargo and passenger revenues for the supplementals would reach $89,533,000 in 1967, a 24 percent increase over those actually reported for the year ended September 30, 1964 ($71,865,000). This portion of the Bureau's estimate is unquestioned and appears fully justified on the basis of past experience.

and, for the most part, without passenger rights in foreign air transportation and split charter privileges. The Bureau's 1967 total forecast civil charter revenues of $33.5 million are some $8.3 million in excess of actually experienced levels, or an annual accretion of about 11 percent spread over an approximate three-year period. Even if some leveling off in the supplementals' growth pattern should occur, it is probable that this forecast will be met and exceeded, considering the new authority included in the Bureau's assumptions and the supplementals' historic rate of development.[100]

However the evidence is viewed, it is clear that continuation and some expansion of the supplementals' authority will not produce significant, much less dire, consequences for the certificated route industry. The 1963 total of some $19 million in civil charter passenger revenues for the domestic trunks and foreign and overseas combination carriers represents a minor portion of their total transport revenues, and no material growth pattern in the extent of their contribution is evident or reasonably foreseeable. Although there are variations between individual carriers, the scheduled industry, without appreciable reliance on the civil charter dollar, is passing through the greatest traffic expansion and increase in operating revenues in its history

—a period also characterized by healthy load factors, constantly improving break-even load factors, and substantial rates of return on investment. Operating profits have

[100] As shown by Appendix C, the civil contract and charter revenues of the supplementals grew approximately 15 percent in 1962 over 1961, 61 percent in 1963 over 1962, and 69 percent in 1964 over 1963.

more than doubled in each successive year in the 1961-1964 period in reaching the present industry total of $350 million, and operating revenues increased about 12.5 percent in 1962 over 1961, 8.7 percent in 1963 over 1962, and 16 percent in 1964 over 1963.[101] The certificated route carriers recorded their biggest gains in the years 1962-1964 which was also the period of the greatest growth for the supplementals. Further, the experience of the transatlantic has demonstrated the ability of the scheduled services to grow and prosper notwithstanding intensive competition in the charter field from both supplemental and foreign air carriers. Under these circumstances, and considering that a significant percentage of the supplemental charter revenues—both from traditional planeload charters and all-expense tour charters—would represent newly generated traffic, in all likelihood the impact of future increments in supplemental air carrier revenues will be largely absorbed by growth and cause little, if any, change in the relative positions of the certificated route carriers and the supplemental air carriers in the total air transportation system.[102]

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[101] Appendix D.

[102] Numerous scheduled air carrier intervenors have presented individual pleas of special competitive impact from supplemental past and proposed operations, notably among them being Mackey, Panagra, Trans Caribbean, and eight local and short haul carriers (Allegheny, Lake Central, Hawaiian, Ozark, Pacific, Piedmont, Southern, and Trans-Texas). However, the evidence does not justify the conclusion that any would be significantly affected by the type and extent of authority being recommended herein. As far as the all-cargo carriers are concerned, neither Aerovias nor Slick participated in the proceeding and Airlift International and Flying Tiger, although formal intervenors, make no claim of undue diversion and introduced no evidence. As is evident from the prior discussion, actual 1963 results indicate no material injury to Seaboard, the transatlantic air cargo carrier.

In the final analysis, the nub of the intervenors' resistance to any expansion of supplemental air carrier authority is their opposition to the all-expense tour charter proposals, and even here, the primary concern is not the potential price competition represented by the lower fares available with charter transportation. As the Joint Intervenors candidly put it, "* * * it is not just, and, indeed, not even primarily, the 'cut-rate' feature which will occasion the massive diversion which the trunklines anticipate if the supplementals' proposal is adopted. It is the supplemental-travel agent tie-in which will accomplish this result." [103]

This contention rests on a convolution of arguments. The Joint Intervenors point first to the degree of reliance by the scheduled industry on passenger sales by travel agents, which has been substantial.[104] If the proposals of the applicants advocating unlimited travel agent participation are adopted, they assert that any of the some 5,500 travel agents in this country could charter aircraft for all-expense tours to be conducted as a scheduled service. They theorize that travel agents would thus be transformed into direct competitors of the scheduled carriers, and that those chartering aircraft for all-expense tours would "logically chan-

[103] Joint Intervenors' brief to the Examiner, pp. 23-24.

[104] In 1963 the Joint Intervenors had some $610,630,000 in domestic passenger revenues from travel agent sales with an industry carrier average of 27.5 percent of total passenger revenues derived from this source. For the same year the foreign (excluding the transatlantic), overseas, Hawaiian, and Alaskan travel agent passenger sales of Braniff, Delta, Eastern, Northwest, TWA, and Pan American totaled about $204 million, and the percentage relationship of travel agent passenger sales to total passenger revenue varied from the low of 22.3 percent for Pan American's Alaska division to a high of 61 percent for Braniff.

nel their group tour traffic to such charter flights in order to preserve their investments in organization and promo-

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tion."[105] The result, according to the Joint Intervenors, would be that substantially all the pleasure market of the certificated route carriers would be exposed to diversion, a market for the trunklines which at 1963 levels is estimated at about $380 million annually—some $220 million domestically (excluding Hawaii) and $156 million in foreign (excluding transatlantic), overseas, and Hawaiian service. Of this amount some $92 million, which represents 1963 domestic and foreign all-expense tour business sold by travel agents, would be particularly affected.

While the supplementals no doubt could penetrate the existing pleasure market of the certificated route carriers in some degree, the consequences which the Joint Intervenors foresee are vastly overstated. In view of the wide diffusion of pleasure travel, the supplementals obviously could not reach the entire market geographically or by the type of travel. In addition, the most reasonable conclusion from the evidence is that sound promotion of all-expense tours by the supplementals should, as in the case of traditional charters, result in the development of traffic which in significant measure would be newly generated rather than diverted from existing services. In the long run the conversion of additional segments of the traveling public to air travel will broaden the base for air transportation and ultimately will inure to the benefit of the entire air transportation industry.

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[105] *Transatlantic Charter Investigation*, Order E-20530, March 3, 1964, Appendix A, p. 31.

It is highly improbable that the helter-skelter defection by travel agents from the scheduled carriers to all-expense tour charters, which the Joint Intervenors assume, would materialize. Given adequate restrictions to assure financial responsibility to the public and needed regulatory con-

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trols in other areas, participation would more likely be confined to the larger and financially stronger tour operators. Moreover, it is equally unrealistic to suppose that the scheduled carriers would so easily abandon the market. Today the average retail travel agent is generally better situated from a commission standpoint in selling scheduled air transportation services and additional efforts are now being made to increase the incentive.[106] As has been demonstrated in the past, the scheduled carriers by experimentation with tour basing fares, promotional fares, and the like, have at their command ample competitive devices to assure their continued dominance.

In short, a limited and controlled program of liberalized authority for supplemental air carriers offers no significant threat to the certificated route carriers. To the extent that such a program provides the competitive impetus to greater exploitation of the pleasure market, this is a plus rather than a minus for the public interest, since pleasure travel is today the segment of the travel market offering the greatest potential for further development. Any adverse effects on the certificated route carriers from a grant

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[106] An example is the Air Traffic Conference proposal to raise the commission rate on sales of independent air tours from 10 percent to 15 percent. Order E-22168, May 14, 1965.

of the authority recommended herein are clearly outweighed by the advantages that should accrue to the public.[107]

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CONCLUSIONS

Nature and Scope of Authority. The foregoing review of the evidence dispels any lingering doubts that the existing civil and military operations of the supplementals, conducted at no subsidy expense to the Government and without deleterious effects on other carriers, are providing a useful public service responsive to a public need and are thereby making a valuable contribution to the American air transportation system. When the question, however, goes beyond the perimeter of their present authority there is an irreconcilable cleavage in the positions of the parties.

Apart from the specific arguments already considered, the intervenors make the general claim that the record will not support any broadening of the present authority of supplemental carriers, either geographically or by type of operation. They in effect equate public convenience and

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[107] The Joint Intervenors appear to rely heavily on the *Skycruise Case*, 10 C.A.B. 751 (1949) in which the Board denied the applications of two carriers to provide domestic all-expense escorted tours. In view of the tremendous intervening growth of air transportation generally and the generative effect which all-expense tour charters are likely to have as demonstrated by this record, that decision is clearly not controlling here. In addition, it should be noted that an important ground for that decision was the Board's conclusion that a grant of the applications might have "a serious effect upon these latter [domestic certificated] carriers." (p. 756). In contrast to the operating profit for the trunks and local service carriers for the year ended September 30, 1964, of some $260 million, the same carriers in fiscal year 1948 had a combined operating loss of some $6.5 million and were in the midst of the critical postwar readjustment and reequipment period. CAB, Annual Reports, 1948 and 1949.

necessity with past demands for service, and on this basis assert that there has been no showing of a public need that would justify new certifications; that additional authority for the supplementals would be duplicative of existing services; and that the services of the certificated route carriers are, in fact, wholly adequate to meet demonstrated requirements of the public. Further, they attempt to work both sides of the street by contending that even though there is no public need that would warrant expanding the scope of the supplementals' present operations, if the

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Board should do so the new services would be patronized to such an extent as to result in "massive" diversion.[108]

The bulk of the applicants are at the opposite end of the pole, for they seek every conceivable type of operating authority that could be authorized within the issues in this proceeding, granted on a worldwide and uniform basis to each member of the class. The supporting arguments they advance are essentially those of the past—the historically thin operating margins of the supplementals; their particular qualifications as charter operators; the desirability of

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[108] The intervenors make a number of other general arguments that warrant brief comment. The Joint Intervenors, for example, are highly critical of an asserted lack of facilities on the part of the applicants to provide foreign and overseas service and the generality of their respective plans of operations. Considering the extremely broad sweep of this proceeding, the alleged deficiencies in these respects are not necessarily fatal. See *e.g., Large Irregular Air Carrier Investigation*, 28 C.A.B. 237 (1959); *Zantop-Coastal*, Order E-18318, May 9, 1962; *Transatlantic Charter Investigation*, Order E-20530, March 3, 1964, Appendix A, p. 26. In any event, in view of the delineation of areas for foreign and overseas operations, the limited number of applicants selected, and their qualifications these considerations pose no real problem.

(10095, 10096)

strengthening through equalizing economic opportunity; elimination of seasonal peaks in their operations; and the need for sufficient flexibility to permit economic utilization and upgrading of equipment and to meet shifting needs of the public.

The contentions of the intervenors strike a familiar but discordant note. It has long been established that public convenience and necessity include the desired goals of the future as well as the proven needs of the present and past. The Board's function under the Act is not simply one of providing a kind of after-the-fact regulation by correcting demonstrated service deficiencies and fulfilling existing service demands shown on a factual record; nor is its role

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confined to that of an impassive arbiter of conflicting private interests. Rather, the Act affirmatively invests the Board with the duty to consider, as being in accordance with the public convenience and necessity, the "promotion," "development," and "encouragement" of air transportation.[109] This mandate imposes duties which are peremptory, and in compliance with it the Board, with judicial approval, has experimented widely in authorizing new and largely uncharted operations.[110] And while the Board is not to exercise its certification power in aid of purely private interests, improving the economic strength of an individual carrier or carriers is a legitimate and often utilized consideration where such strengthening is an incident to achievement of the public interest.

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[109] Section 102.

[110] See *e.g.*, *Braniff Airways* v. *C.A.B.*, 147 F. 2d 152 (C.A.D.C. 1945); *American Airlines* v. *C.A.B.*, 192 F. 2d 417 (C.A.D.C. 1951); and *Delta Air Lines* v. *C.A.B.*, 247 F. 2d 327 (C.A. 5, 1957).

In exercising its developmental responsibilities the Board of necessity must rely to a substantial extent on its evaluation of the future; otherwise, no new and previously untried service would ever be provided. The fact that such an evaluation involves liberal amounts of prophesy and judgment does not make it any less firm a basis to support certification, for the provisions of the Act embodying the declaration of policy "are as much an enactment by Congress as is any other section of statute."[111] What is essential is that the record contain a "hard core of factual possibility" which will undergird the exercise of a particular judgment.[112]

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As is apparent from the evidence analyzed and considered, the facts comprising the "hard core" are present in abundance here to support the conclusion that the public convenience and necessity require some expansion and liberalization of the role to be played by supplemental air carriers. General economic conditions have provided and should continue to provide a very favorable climate for all facets of air transportation. Yet charter transportation, despite its lower price appeal, has shown nowhere near the growth of the scheduled services where the right to provide it has rested exclusively in the hands of the certificated route carriers. It is doubtful that the civil charter market ever would significantly expand and grow if left entirely to the scheduled carriers, since these carriers naturally gear their operations to the scheduled services

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[111] *American Airlines* v. *C.A.B.*, *supra*, at p. 420.

[112] *Id.* at p. 421.

which are their primary responsibility and most lucrative source of revenue.

With the competitive stimulus that can be provided by selected charter specialists who are free to concentrate on charter promotion, there is every reason to believe that traditional passenger charter services in overseas and foreign markets will show healthy development, although in many areas not to the same extent or with the same rapidity as has been experienced across the North Atlantic. Corollaries to this development will include, among other things, an enhanced base for air transportation generally as well as price and service advantages for travelers both to and from the United States. The grant of concomitant planeload charter cargo rights may well accomplish some growth for a now meager market and also provide operating flexibility for the carriers in coordinating passenger and cargo movements and minimizing directional imbalance in their operations. Split charter authority for traditional pas-

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senger charters is warranted, as across the North Atlantic, by developments in modern airline technology. All-expense tour charters, while admittedly developmental and experimental, hold real promise both domestically and internationally as the instrumentality most likely to accomplish a significant expansion of pleasure air travel, the segment of the air travel market offering the greatest potential for successful exploitation. Since the opening of these additional avenues for beneficial public service will lend economic strength to the supplemental carriers selected by making available needed additional sources of civil revenues and can be accomplished without material adverse

effect on any certificated route carrier, a grant of new and liberalized operating authority to the extent indicated is clearly dictated by the public interest.[113]

Although the prevailing direction of the public interest is clear, the other extreme of worldwide, unrestricted and uniform civil authority for all supplemental carriers is equally to be avoided. After an evolutionary period of some 20 years the supplemental air carriers have achieved a reasonable level of maturity, and the fundamental task now is to ascertain their permanent place in the air transportation system. However, apart from the military and interstate fields in which the need for and usefulness of supplementals are established by past experience, the other

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types of authority recommended for them, while fully warranted, are largely experimental and involve the risks and uncertainties of the unknown and the untried. Sound experimentation under these circumstances is not best served by the theory of the roving license, with its attendant dilution of revenue sources and the encouragement which it lends to over-expansion and uneconomic competition

However desirable uniform authority for all may be from the standpoint of some of the applicants, there are marked

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[113] Pursuant to the request of some of the applicants, an issue was included as to their authority to charter aircraft to airfreight forwarders. Forwarders are now free to utilize the charter services of supplementals both domestically and internationally, and if future authority is confined to planeload movements, no reasons are apparent for disturbing the historic relationship. An additional suggestion that the present military authority be expanded so as to authorize unlimited planeload charters for any agency of the United States Government was unsupported on the record.

(10099, 10100)

differences in their present and potential capabilities and the extent of the contribution they can make to the public interest. The time has come for frank recognition of the fact that all supplemental air carriers cannot be the same in size, earning capacity, profitability, function or opportunity, just as individual air carriers have not been able to achieve complete equality within other segments of the air transportation industry. And "class" type authorizations, issued to all in the hope that they may be utilized, cannot legislate that result. The better regulatory policy is carefully to delineate the specific areas of operations to be served by designated carriers on a basis commensurate with probable public needs, and then to provide the participants maximum security within those limitations. Even then selected carriers having broader authority than others will not have achieved the millennium, for their success will depend primarily on the fruits of their promotional efforts. However, they will have been given the greatest possible opportunity and incentive to maximize their profits, to establish their identity in the markets, and to make the necessary investments in personnel and equipment. This

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is the road offering the greatest prospect for orderly and sound realization of the public interest.[114]

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[114] Some of the applicants appear to argue that Congress in enacting Public Law 87-528 intended that the supplementals continue to be treated as a class for all purposes, including the nature and scope of their authority. However, no such intention is apparent from the face of the legislation or its history. This legislative enactment created no permanent grandfather rights for any carrier but merely afforded operating supplementals the opportunity to continue on an interim basis pending disposition by the Board of their applications for permanent authority under section 401(d)(3). The standard for certification under the latter subsection, as under the other provisions, is the public convenience and necessity.

Areas for Service and Carriers Selected. Since the basic need shown by the record is for promotion and development, and in view of the wide expanse of this proceeding, considerable judgment must be exercised in establishing the precise areas for service. The same is true with respect to the number of carriers deemed required as well as their selection. Further, as has been the case historically when dealing with supplemental air carrier authorizations, the designation of specific terminal and intermediate points is not practicable.

Although the number of participating carriers will differ from area to area, the kind of civil authority they should possess does not vary. This includes the right to perform traditional planeload passenger charters (and related split charters), planeload cargo charters, and all-expense planeload tour charters subject to the terms, conditions, and limitations hereinafter recommended. And while exceptions may be necessary in particular circumstances, logic dictates that for successful exploitation the longer haul foreign and overseas markets demand the highest degree of financial and operational strength. By the same token,

the nearby markets involving less in the way of equipment versatility, personnel and facilities, and financial commitments are generally more appropriate for the smaller, financially weaker, or domestically oriented carriers. Selection is to be made from among the 12 presently operating supplementals which, as later appears, are the applicants deemed qualified to operate the supplemental air transportation services recommended herein.[115]

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[115] See pages 10130-10134, *infra*.

(10101, 10102)

The awards recommended have as their objective the creation of a mosaic of authorizations commensurate with probable future needs which in the aggregate will provide supplemental air transportation services that truly supplement the existing certificated air transportation system without any undue adverse impact upon it. Due regard has been given to such factors, among others, as the aptitudes of particular applicants and their historic needs and experience, variations in the probability of success in promoting charter service within various areas, the relative financial condition and operational qualifications of individual applicants, and the needs of given applicants for sufficient elbow room to permit growth and development.

A consideration of the particular types of authorization and areas for service follows.

Military. For reasons already considered in detail, it is concluded that all of the 12 successful applicants should

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be authorized, as at present, to engage in air transportation of persons and property on a planeload basis pursuant to contracts with the Department of Defense.

The Bureau has suggested that such awards be made coextensive with any civil authority granted, apparently on the theory that all carriers would thus be given maximum revenue opportunities in performing their assigned roles. However, the experience of the past and present calls for rejection of this approach and supports the conclusion that military operating rights of the supplementals should be continued on a uniform basis without geographical limitations. While the Bureau's objective is generally a desirable one, the needs to be served by military authoriza-

tions are those of the national defense, not normal commercial needs or those of any individual carrier. Military requirements are at times highly unpredictable and may on occasion call for the services of virtually the entire supplemental industry. Any advantages that might accrue to particular supplemental air carriers from tailoring military authority are outweighed by the desirability of retaining the utmost flexibility for prompt and unconditional commitment to the interests of the national defense.

Interstate and Overseas. By statutory definition interstate air transportation is, of course, between the 50 states and the District of Columbia while overseas air transportation generally refers to operations between the United States and its possessions. It is concluded that all 12 operating supplementals should be authorized to perform supplemental air transportation in the interstate area of the kind found required, while awards in overseas air transportation, to be issued on a more limited basis, should encompass the same operating rights.

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The only specific objections to grants of this scope domestically come from the Joint Intervenors, who would deny all supplementals civil charter authority to serve Hawaii and Alaska and thereby restrict them to the 48 contiguous states. Their interest in Hawaii is understandable, since the Islands form an established and increasingly popular resort center, and mainland U. S.-Hawaii operations produce an important part of their pleasure travel revenues. At the same time, however, such operations are of equal if not greater significance to the supplemental air carriers, accounting in 1963 for 12,885 charter pas-

sengers and $1,249,300 of their $4,190,600 in interstate civil passenger revenues.[116] Civil charter revenues from Alaskan operations have not been appreciable for either the supplementals or the certificated route carriers. Nonetheless, projections indicate continued population and employment growth for Alaska; the state possesses all of the natural resources conducive to tourism; and further development is likely if problems relating to tourist facilities and higher cost levels can be overcome. In short, there is no persuasive basis for denying the benefits of supplemental air transportation to Hawaii and Alaska any more than it would be reasonable to effect a similar discrimination with respect to any other two states of the Union.

The markets falling within the statutory definition of overseas air transportation are few in number and confined

generally to the areas of the Caribbean, Central America, and the Pacific.[117] Except for Puerto Rico and the U. S. Virgin Islands, none of them, standing alone, could now reasonably expect to receive any significant volume of charter service.

By far the most practical and realistic approach is not to view these points in isolation but to consider them in relation to the broader geographic areas of which they are a part; otherwise, the potential for beneficial charter service will be unduly and artificially restricted. To illustrate,

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[116] For the same period 15 reporting certificated route carriers had 10,347 charter passengers and $1,067,000 in civil charter passenger revenues involving Hawaii.

[117] The Canal Zone, Puerto Rico, and the U.S. Virgin Islands; American Samoa, Guam, Johnston Island, the Marshall Islands, Okinawa, and Wake Island.

the type of all-expense tour charter authority recommended herein contemplates all-expense tours involving a minimum of two tour destinations at least 50 miles apart. A carrier having only overseas authority could not perform a service combining San Juan with Nassau or Montego Bay, for example, because operations to the latter two points involve foreign air transportation. This would be so even though there is a reasonably close geographical relationship between the points and such a tour might have particular appeal from the standpoint of the potential passenger. The ability to serve all such points within the same broadly defined area would enhance both the public usefulness of the service and its benefits to the operating carrier. For these reasons points technically within the confines of

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overseas air transportation are considered as part of related and broader geographic areas, subsequently discussed.[118]

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[118] Trans Caribbean acknowledges that there may be a limited role for Southern Air Transport in the Caribbean but otherwise opposes any supplemental air carrier authorization in Caribbean overseas and foreign markets, particularly that which might involve the San Juan-Aruba segment served by the carrier. In doing so, TCA points primarily to the substantial U.S. flag competition now existing in U. S.-San Juan markets, the abundance of scheduled service, the prevailing low level of fares (including promotional and experimental fares) and the dearth of past supplemental carrier charters. Here, however, as in other areas, the needs are basically promotional and developmental rather than remedial. Without the substantial attraction of San Juan, the possibilities for the most effective development of pleasure travel to and from the Caribbean would be greatly diminished. Further, there is no room for a serious contention that some expansion in civil charter activities would materially affect existing scheduled carriers. On the basis of September 1963-March 1964 figures, the New York-San Juan market had reached 650,000 annual passengers and was

(10105, 10106)

Transpacific.[119] Of the long haul overseas and foreign markets at issue in this proceeding the transpacific area offers the greatest potential for future development. Because of the distances involved, the expense level for pleasure travel must necessarily remain relatively high. Nonetheless, the substantial price reductions possible with charter transportation will be significant in expanding the markets and bringing the benefits of low cost air transportation to travelers both to and from the United States.

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The increasing importance of travel movements between the U. S. and Asiatic and Oceanic countries is demonstrated in various ways on the record, many of which have already been recounted. Total travel to and from these areas has quadrupled since 1951; the number of temporary visitors to the U. S. has shown a steady increase, as has the number of passports disclosing first area destinations in the Pacific countries; and the number of air passengers arriving and departing the U. S. for Pacific countries has more than doubled between 1959 and the year ended April 30, 1964—

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served by three U. S. scheduled carriers without competition from foreign operators. In size this market is some 15 to 20 times larger than the New York-London, Paris, or Rome markets which are served successfully by the two U. S. flag carriers and numerous foreign air carriers, and with competition from the latter and the supplemental air carriers for charter traffic.

[119] The transpacific area is deemed to include the U.S. overseas points in the Pacific previously mentioned (f.n. 117, *supra*) and civil passenger and cargo flights in air transportation between any point in any State of the United States or the District of Columbia, on the one hand, and points in Australasia, Indonesia, and Asia as far west as longitude 70 degrees east, on the other hand, via a transpacific routing. See *e.g.*, World's interim certificate appended to Order E-21304, September 21, 1964, part III, p. 2.

from some 323,000 to over 683,000. Japan in particular (and to a lesser extent such additional destinations as Hong Kong, the Philippines, and Korea) has emerged as a major travel attraction. There were, for example, some 118,000 passengers (U. S. citizens and aliens) traveling by air between the U. S. and Japan in the fiscal year 1958 compared to over 346,000 such passengers in 1963. Further, there are indications of growing interest in pleasure travel to the U. S. from Pacific countries, an expansion of tourist facilities throughout the Pacific, and an increasing tendency on the part of "second time" travelers, who may have visited other areas such as Europe, to choose Pacific destinations. Despite these and other indicia of continuous market expansion, the civil passenger charters of the two U. S. flag carriers have been minimal.[120]

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Perhaps the most important single deterrent to traffic development in the Pacific is the relatively high fare level which has subsisted despite the urgings of the Board for reductions. Promotional and experimental fares are unknown, although they are common to other areas such as the transatlantic where they have played an important and demonstrable part in expanding traffic and increasing load factors. While the mileages are comparable, air fares between the west coast points of San Francisco and Seattle

[120] In 1963 Northwest carried 98 passengers for $6,239 in transpacific civil passenger charter revenues while Pan American realized $197,130 from the carriage of 683 passengers. The highest annual revenue total from this source for either carrier during the 1961-1963 period was the $283,895 earned by Pan American in 1961. The trend for the two carriers has been downward—$442,572 in total transpacific civil passenger charter revenues in 1961 to $203,369 in 1963.

and Tokyo, for example, are one-third to one-half higher than those between the same west coast points and London. This situation may to some extent be the result of intransigence within IATA, but it certainly is not dictated by any needs of the U. S. flag carriers which are enjoying high yields and ever decreasing break-even load factors. The Pacific operations of both Northwest and Pan American consistently have produced substantial rates of return on stockholders' equity as well as, in recent years, rates of return on investment at least double those of their respective systems.[121]

While the future for charter service in the Pacific is promising, in all probability the development will be slower than that experienced across the Atlantic. Until the problems are overcome, the acquisition of landing rights may pose difficulties and in some areas tourist facilities must

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be expanded and improved. Further, despite continual growth the total existing air passenger market between the U. S., on the one hand, and Asia and Oceania, on the other, is only about 23.5 percent of U. S.-Europe traffic, measured by the yardstick of air passengers arriving and departing the U. S. for such countries. To meet the needs of U. S.-Europe markets the Board originally recom-

[121] In 1963 Pan American's rate of return on stockholders' equity was 43.89 percent for its Pacific division contrasted to 21.39 percent for its entire system, while the comparable figures for Northwest were 30.05 percent (international and territorial) and 11.56 percent (domestic). The rate of return on investment for Pan American's entire system was 12.17 percent compared to 21.49 percent for its Pacific division. Northwest had a rate of return on total investment of 8.78 percent domestically and 17.77 percent in international and territorial operations.

mended three supplemental carriers, two of which have effective certificates; several others have been granted temporary seasonal authority; and the Board is now in the process of considering the possible certification of additional charter operators.

All factors considered, it is concluded that the certification of three supplemental air carriers would amply meet the foreseeable developmental needs in the transpacific area. Upon a comparative evaluation of the 12 eligible applicants, the balance clearly calls for the selection of World, TIA, and Southern. These are the three predominantly Pacific oriented carriers; each has had extensive experience in long over-ocean flights in the precise area, primarily in military operations; and each has personnel and facilities in the Pacific. Both World and TIA operate modern turbo fan jet aircraft, a distinct advantage in economy and passenger appeal for operations in the vast expanse of the Pacific. Southern, although presently without jets, should have the capability of acquiring them if needed in view of its consistently sound financial condition. All three carriers possess the inherent financial and operating strength for successful operations. While other applicants

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no doubt could operate the services, any advantages flowing from their certification are outweighed by the foregoing factors of preference.[122]

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[122] Conceivably other carriers such as AAXICO, Capitol, Saturn, or Zantop might fall into this category. However, apart from their lack of comparable experience in the Pacific, for reasons subsequently set forth a balancing of all interests indicates that they are better suited for awards elsewhere.

(10109, 10110)

Canada and Mexico. Although there is little specific data of record, Mexico, with its sunny climate and colorful history, and Canada, with its natural beauty, are obvious tourist attractions for the American public. The proximity of these two countries, both contiguous to the continental United States, and the correspondingly lower cost factor provide additional incentives for transborder travel. Historically, there has been relative ease of entry for air movements to and from Canada, while charter flights involving Mexico have been less frequent and subject to considerably more foreign government restrictions. In the past at least six supplementals have had occasion to conduct passenger charter flights to Canada pursuant to individual exemption authority from the Board. The civil passenger charter revenues for the combination carriers from charter operations in the entire North America area have not been large in relation to their total revenues.[123]

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Upon a balancing of all pertinent considerations, it is concluded that two of the applicants should be granted

[123] Looking at the 12 presently operating supplementals, in the 1961-1963 period there were some Canadian charter operations by American Flyers, Johnson, Modern, Purdue, Saturn, and Vance. As appears from the source indicated in footnote 37, *supra*, between June 30, 1964, and June 1, 1965, the Board issued some 25 exemptions for Canadian passenger charters to American Flyers (10), Capitol (1), Johnson (2), Purdue (4), Saturn (2), TIA (4), and Vance (2), and six for Mexican operations (American Flyers, 2; Johnson, 2; Saturn, 1; and World, 1). As reported to the Bureau, total foreign passenger charter revenues for all supplementals in the North American classification used by the Bureau (Canada, Mexico, Bermuda, and the Bahamas) totaled $92,147 in 1961, $53,887 in 1962, and $125,617 in 1963. The comparable figures for all of the combination carriers were $638,334 in 1961, $409,979 in 1962, and $1,018,848 in 1963.

Canadian authority only and an additional four should be authorized to provide supplemental air transportation services between the United States, on the one hand, and Canada and Mexico, on the other. Except for one applicant of the six, these are the smaller of the supplementals who are not as well situated from the standpoint of demonstrated operational and financial capability. The shorter stage lengths and the less demanding equipment and personnel requirements make these markets particularly appropriate for operation by these carriers. This liberalization of their present operating authority will afford the carriers selected opportunities for growth and expansion that should not place an undue strain upon their resources and would give them access to these markets unencumbered by competition from the larger and more powerful supplementals.

Operating rights to Canada are a natural for Johnson and Purdue. Both are relatively small in size and scope of operations, they are financially stable on a modest scale, and each has some past interest in providing Canadian service. Johnson is renowned for its unique skills in mountain flying throughout the Pacific Northwest, particularly its firefighting activities under contract with the U. S. Forest Service which account for a substantial part of its operations. Johnson's other charter activities, which occasionally have involved transiting the U. S.-Canada border, are entirely nonmilitary and have been confined mainly to domestic passenger movements, especially for athletic teams of universities with which it has had long term associations. Purdue is a small carrier operated on a nonprofit basis as

an adjunct of the educational activities of the university and has the greatest historic interest in Canadian passenger operations for hunting and fishing parties, etc., of all the supplementals. Whatever may be the technical scope of their applications, the record makes clear that the main thrust of the requests of both Johnson and Purdue is their desire to obtain Canadian operating rights and to retain interstate authority on a basis of equality with other supplementals.

The remaining applicants selected are American Flyers, Modern, Vance, and Zantop. American Flyers has been the most versatile of the four in the operation of conventional charter service. Originating as a fixed base operator, its early operations were confined to passenger charter services with little participation in the provision of individually ticketed services. Reliance on military revenues increased consistently throughout the 1961-1963 period, and starting in 1963 the carrier undertook a program designed to expand its civil charter revenues with use of Lockheed Electra and other aircraft. Except for Purdue its historic experience with Canadian operations, while not extensive, is superior to other applicants, and more recently its charter flights have extended into the Caribbean.

American Flyers' financial condition is deemed sufficient to permit expanded certification, although there have been some weaknesses, particularly in a persistent negative working capital position. Further, the applicant's continued financial well-being has been largely dependent upon one man—Reed Pigman, its owner and president, who also provides the business leadership for the company. These circumstances counsel caution in order to guard against situ-

ations conducive to an overextension of the carrier's efforts. The award of Canada-Mexico authority, together with a new authorization in the Caribbean subsequently recommended, provide ample opportunities for the carrier to increase its sources of civil revenue while performing a useful public service.

By virtually all yardsticks Modern and Vance are two of the smaller, predominantly domestic supplementals and of questionable resources and financial resiliency for extensive operations. Both are significantly smaller than American Flyers in size and scope of operations, but like the latter carrier each is dependent largely on one individual for financial strength—John P. Becker, in the case of Modern, and Vance Roberts, Vance's president.

Of Modern's total of $1.1 million in transport revenues for the year ended September 30, 1964, 90.1 percent was attributable to military operations. Even with this high degree of dependence on military revenue sources Modern in the last two years has shown negative net worth and net losses; it has had a negative working capital position for at least the past four years.[124] Until a modest expansion program was undertaken in 1964 the volume of Vance's operations as a supplemental air carrier were insignificant from an industry viewpoint and, for the past four years, the carrier's financial operating results have hovered at or near the break-even point. Vance does, however, have the advantage of maintaining its home base in Seattle, Washington, with a long history of performing charter services, including some Canadian flights, with both small and transport type aircraft.

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[124] Appendix C.

If Modern and Vance are to survive, each needs some broader horizon for economic development. While it may be, as both applicants appear to claim, that their past performance has been affected in some degree by special circumstances and by conservatism in management policies pending a determination of their place in the industry, their history and marginal financial condition do not justify any broader expansion of authority than that recommended.

Zantop presents a special case. Except for a negative net working capital position that does not appear to have impeded its operations, Zantop is one of the largest and strongest of the operating supplementals. Its strength is particularly evident from its net worth, the volume of its operating revenues, and the established profitability of its operations. The carrier is, however, a relative newcomer to the supplemental industry, having received its supplemental certificate in 1962 by transfer for the purpose, among others, of acquiring air carrier status necessary to continued operations for the military. Now, as previously, Zantop is almost exclusively a military and civil cargo specialist. Of its entire fleet of some 59 aircraft owned or leased, only four—three DC-3's and one DC-4—are in passenger configuration. No civil passenger charter flights were undertaken until the latter half of 1963, and only $14,000 of its calendar year 1963 total transport revenues of $12.9 million came from this source.

The sum of the circumstances surrounding this carrier show that it has a lesser degree of need in the normal sense for new markets than do the other operating supplementals. Entry into the civil passenger charter field on a broad scale would change its basic nature. Zantop's operations are now

substantial and clearly profitable, with a healthy ratio of civil and military revenues to total transport revenues of 46.3 percent and 53.7 percent, respectively. In short, Zantop does not fit the mold of the usual supplemental; as a specialist, it has and will continue to derive its greatest sustenance from the contract cargo operations for Ford, General Motors, and Chrysler and its military cargo activities, all of which can be operated with the interstate and military authority recommended. The additional opportunities for growth by participation in the Canadian and Mexican charter markets should be fully adequate for Zantop's future development.[125]

The Caribbean.[126] Even acknowledging the effect of the unpredictable and volatile political eruptions in the Caribbean, as exemplified by the situations in Cuba and the Dominican Republic, the Caribbean area offers the most favorable immediate prospects for pleasure travel develop-

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[125] The remaining six applicants have, of course, the capabilities for Mexican and Canadian operations, either in addition to or in lieu of the carriers selected. However, apart from differences reflected in their background and experience, the services recommended should be ample for promotional purposes and any participation by the larger carriers could only be at the expense of the smaller carriers in areas logically suited for their development.

[126] Precise definitions of the Caribbean area have not been advanced and there is considerable variance in geographic coverage reflected in the presentations of several parties. As used herein, the Caribbean area includes the following: supplemental air transportation between any state of the United States or the District of Columbia, on the one hand, and a point or points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba, the Leeward and Wayward Islands, or any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand.

ment of any of the overseas and foreign markets in which the supplementals could be permitted participation as the

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result of this proceeding. The lure of sun and sea is compelling for the tourist, and the attraction of lower cost for charter services is bound to develop new traffic to and from the area, which is already one where there has been some concentration on charter services by Pan American. From the standpoint of distance, geography, and facilities, it is the area which provides the closest analogy to the inclusive tour charter services to "sun spot" resorts that have proven to be so popular with the British public.[127]

Passenger charters of the supplementals to and from the Caribbean have been very few in number, no doubt hampered in part by the absence of certificate authority which would warrant extensive promotional efforts. There were some passenger operations by American Flyers and Saturn in 1963; these carriers subsequently continue to participate on a limited scale, as have Capitol and some other supplementals.[128] In 1964 World operated an extensive and

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[127] The resort characteristics of the Caribbean account for a substantially higher percentage of known pleasure travelers than in other areas. A survey conducted during parts of 1963 and 1964 by the Port of New York Authority of U. S. residents traveling overseas out of New York showed the percentage of the total passengers surveyed whose purpose was touring or visiting resorts to be 84 percent for Bermuda and 68 percent for the Caribbean in contrast to 30 percent and 13 percent, respectively, for Europe and South America. The Joint Intervenors had some 478 civil passenger charter flights to the Caribbean, Central America, and Bermuda in 1963, more than double the number they operated across the Atlantic. However, 439 of these flights were operated by one carrier, Pan American.

[128] In 1963 American Flyers had two passenger charters and Saturn 12 in the geographic area covered by the Caribbean, Central

highly successful all jet passenger charter program for Chevrolet which involved carrying 5,610 passengers from

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37 departure cities to New York for two days, Nassau for two days, and return. And, as has been seen, Southern has some identity in parts of the Caribbean by virtue of its more extensive cargo flights to Puerto Rico, the Virgin Islands, and the Dominican Republic.

Of the 12 qualified applicants, six are particularly well suited for certification to provide supplemental air transportation in the Caribbean—American Flyers, Capitol, Saturn-AAXICO,[129] Southern, TIA, and World. Each has sufficient resources and facilities to participate effectively in traffic development in these more competitive markets. Such authorizations in the hands of these carriers should provide adequately for the needs of the public and at the same time afford additional and desired strength for their own operations. Any authorizations beyond those recommended would in all likelihood unduly dilute the traffic and

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America, and Bermuda. Between June 30, 1964, and June 1, 1965, the Board issued some 32 exemptions for supplemental passenger charters to the Bahamas, 10 each to American Flyers, Capitol, and Saturn and two to Modern. There were 13 involving Jamaica (American Flyers, 7; Saturn, 5; Capitol, 1) and five for Bermuda (Capitol, 1; Saturn, 2; World, 2). CAB, Weekly Summary of Orders and Regulations.

[129] This selection is made on the assumption that the pending Saturn-AAXICO merger agreement in Docket 15675 will be approved. So far as appears from this record, a merger of the two carriers would provide a cure for AAXICO's deficiencies in civil markets while, at the same time, overcoming Saturn's past financial problems typified by marginal net worth, operating losses, and a continuous negative working capital position. In the event that approval is not granted, a reappraisal of the awards recommended here should be made.

impair the economic feasibility of the services without producing offsetting public benefits.

All of the foregoing carriers except TIA have had some past experience with operations in the area, albeit for the most part on a minor and spasmodic basis. The Caribbean operations are generally short to medium haul by comparison to the transoceanic markets and they lend themselves to operations with both piston and jet equipment. These particular applicants have considerable equipment versa-

tility, ranging from piston aircraft to American Flyers' Lockheed Electras and the pure jets of Capitol, TIA, and World. Southern conceivably might experience some passenger equipment shortage at its existing fleet level but the carrier possesses ample means to supplement it. With Caribbean and Canada-Mexico authority American Flyers should be assured of adequate operating flexibility and growth opportunities. Authorizations in the Caribbean—the overseas and foreign area most likely to produce immediate traffic response—are of particular importance to Capitol and Saturn as backup support for their certificated transatlantic operations and to Southern, TIA, and World as a means of buttressing their capacities to utilize the other overseas and foreign authority recommended for them in this proceeding.

From the financial standpoint, the positions of all the carriers selected are deemed adequate. The situations of American Flyers, Saturn-AAXICO, Southern, and World already have been noted. Capitol and TIA are among the largest operators in the industry, currently ranking second and fourth, respectively, in total operating revenues. While

each has positive net worth and has been experiencing operating profits, for the past three years both have had substantial negative working capital positions. Their forte, however, lies in their demonstrated ability to carry on extensive, successful, and continuous operations despite shortages in working capital and their possession of jet equipment with its superior appeal to at least a significant portion of the traveling public.

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Central and South America.[130] On the basis of known experience, the possibilities for charter traffic development to and from Central and South America are the least promising of all the overseas and foreign areas with which this case is concerned. Such references to the potential of the area as do exist in the testimony of travel agent witnesses are not encouraging. Historically, civil passenger charters involving South America have been virtually nil. None was operated by any supplemental air carrier in the 1961-1963 period; and, of the Joint Intervenors, only Pan American operated them—21 in 1963 and only 64 in the entire 1961-1963 period.[131]

The reasons for such paltry charter development cannot be ascertained with certainty from the record but at least

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[130] Included in this category are the countries on the continent of South America; the Canal Zone; British Honduras; and the Central American Republics of Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, and Panama.

[131] The history of civil cargo charters to and from South America tells the same story. The applicants operated no such charters in 1961, four in 1962, and 12 (all by Southern) in 1963. Pan American, alone among the Joint Intervenors, operated 12 in 1961, three in 1962, and none in 1963. More recently the Board authorized World to operate 13 mixed passenger charter flights between the United States and Brazil. Order E-22464, July 22, 1965.

(10118, 10119)

some of the contributing causes are known. Leaving aside the role which may have been played by lack of interest and promotion, it is true that the historic traffic and rate of growth have not been as great as in other areas less remote from the principal world markets. Also, there is extensive competition from foreign air carriers in the area, much of which is provided by non-IATA carriers which exert continual pressure on rates. The result has been that fare levels are lower than in some other areas of comparable distances. Further, many Latin American governments have tended to be highly protective of the interests of their

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own carriers and therefore to resist encroachment by carriers of other nationalities beyond the level of competing service they are obliged to permit by reason of reciprocity or bilateral agreements.

Apart from problems such as these which may be overcome or minimized in time, it is not unreasonable to expect that concentrated promotional efforts would meet with at least a modest response from newly developed traffic. South America accounts for about one-seventh of the world's land area and has virtually every type and variety of natural attraction. Much of its climate complements that of the United States. This is an advantage which, if exploitable, would aid in smoothing out seasonality problems for the carriers and increasing the attractiveness of pleasure travel. The countries of Central America are, of course, favored by the appeal of a climate which should be conducive to tourism.

Population, visitors to the United States, and air travel generally are all on the rise. The population of the Latin

American Republics is expected to increase to 283 million by 1970 from a level of 155.6 million in 1950. South American visitors to the United States rose from 71,965 in 1959 to 118,662 in 1963; or 65 percent, while over the broader span between fiscal 1951 and 1963 total travel by air to and from South American countries increased 232 percent—from 118,631 to 393,551. Since the Latin American countries belong to the group of nations that have developing economies, as contrasted to those already developed, it is likely that growth will accelerate. The estimated growth rate of the gross domestic product of the Latin American Republics exceeds that for many developed countries, including the United States, and surpasses the average growth rate projected for the total free world.

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Despite the less optimistic outlook for charter services to and from Central and South America than elsewhere, some limited experimentation designed to promote and develop these markets is warranted. The circumstances, however, indicate that the Board should tread slowly and restrict participation to highly qualified applicants. Two carriers should be ample to meet the developmental needs, and such limited participation clearly would not produce any adverse effects upon the present United States flag carrier operations in the area. An important consideration in selection must be that the applicants now have the strength and resources necessary to provide the extensive promotional efforts that will be required. In addition, in view of the vast distances involved and the relative thinness of the present traffic flows, the possession of jet aircraft would appear to be a practical necessity for the provision of an appealing and saleable service.

(10120, 10121)

The choice naturally reduces itself to one between World, TIA, and Capitol. All three have extensive experience in long range operations; all now operate pure jets and would be in a position to institute service more promptly than any of the other applicants. World is entitled to preference because of its superior financial position and inherent strength, coupled with its requirement for diversification. As between Capitol and TIA, the balance favors TIA. Capitol is now heavily committed to its certificated civil passenger charter operations across the North Atlantic, which will continue to be a primary area of concentration for the carrier. TIA's better operating profit picture should permit it more readily to invest in promotion and development. Also, with 16.1 percent of its transport revenues derived from civilian sources as contrasted to 31.8 percent for Capitol, TIA has a relatively greater need for broadening the base of its civil services.[182]

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Transatlantic Cargo. Factors of the past and the likely future bearing on cargo charters already have been considered in detail. In general, it was concluded that planeload civil cargo charter rights are a natural and desirable concomitant type of authority for the supplementals in any overseas and foreign area in which they are authorized to conduct passenger charter operations.

There obviously is no underlying need, past or future, for extensive civil cargo charter operations by the supplementals across the North Atlantic. However, awards of planeload cargo charter rights to the certificated transatlantic passenger charter operators, Capitol and Saturn,

[182] Appendix C.

fully accord with the requirements of the public convenience and necessity since (1) they will aid in the development of new traffic in a now meager market, and any success in this field will redound to the benefit of the shipping public; (2) such authority will afford these two carriers some degree of operating flexibility in their efforts to avoid excessive ferry mileage in performing their passenger charter service; and (3) planeload cargo charters operated by these two carriers would be basically nondiversionary and would not result in any significant adverse impact upon any United States flag carrier.

Fitness of the Applicants

Although the criteria for measuring fitness, willingness, and ability cannot be determined with mathematical precision, the general tests to be applied are now well established. One important ingredient is the compliance disposition of a particular applicant. Insofar as the 12 operat-

ing supplementals are concerned, this is not a factor of decisional significance for none has engaged in activities that might be deemed disqualifying for the purposes of this proceeding.

Particularly important among the host of other considerations to be evaluated are experience, personnel and equipment, operating plans and facilities, and the financial posture of the applicants. Carriers which have been able to operate continuously and successfully, and therefore to establish going-concern status, have an obvious advantage in showing their ability to comply with the ultimate statu-

(10122, 10123)

tory standard. Conversely, for new applicants or those which have had prolonged lapses in operations, the task of establishing their fitness naturally is a more demanding one.[133]

The enactment of Public Law 87-528 left no doubt of the overriding concern of the Congress that the financial condition of any supplemental air carrier be sufficiently strong to assure adequate and continuing protection of the public. This basic intent has been recognized by the Board in the following language:[134]

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"Looking at the pattern of the supplemental legislation and its legislative history, we are convinced that Congress viewed the financial fitness of supplemental carriers as having a direct bearing on safety of operations and fair treatment of the public; that it contemplated that such carriers should have and maintain a minimum financial strength and stability sufficient to protect the public from risk and abuse; and that it intended for the Board to eliminate from the supplemental field carriers who did not meet such minimum

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[133] In assessing the case presented by a new applicant in the *Large Irregular Air Carrier Investigation,* the Board said

"* * * operational ability for such an applicant is not established merely by pointing to sources of potential traffic, equipment, talent, and funds not integrated into a plan for doing business, at least in the absence of a showing of considerable managerial and financial strength, well in excess of applicant's. Operational ability can be established on the basis of limited resources by showing that such resources are available and will be sufficient not only to inaugurate the proposed supplemental operations but also to continue such operations for an initial period of time, such as 1 year." 28 C. A. B. 224, 270 (1959).

[134] Order E-21562, December 7, 1964, pages 5-6.

standards before financial weakness could translate itself into injury to the public rather than withholding action until after the financial unfitness had evolved into damage or injury to the public."

Again, in underlining its own responsibilities to honor this purpose, the Board said:[135]

"It is not within the province of the Board to speculate on whether the Congress might have subjected supplemental carriers to less stringent requirements or on the wisdom of the particular requirements that it did impose. The critical fact is that Congress, after careful and thorough evaluation of conditions in supplemental air transportation, concluded that only those carriers that established a minimum financial strength and stability sufficient to protect the public from risk or abuse should initially be permitted to operate, and only those carriers that maintained such strength and stability should be allowed to continue operations. Our task is limited to carrying out that Congressional intent."

Upon consideration of all the evidence in the light of these requirements, for reasons that follow it is concluded that the applicants Conner, Holiday, ONA, Standard, Stewart, and USOA are not fit, willing, and able to be certificated as supplemental air carriers. None possesses sufficient operational and financial capabilities to meet the statutory standard.[136]

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[135] *Id.* at p. 6.

[136] Detailed summaries of the pertinent facts concerning these and other applicants are contained in Appendix A.

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The Unqualified Applicants.

Conner. The applicant's predecessor in interest operated intermittently as a large irregular carrier between 1949 and 1959 under the direction of Mr. F. A. Conner. No flights in air transportation were performed after receipt of a supplemental air carrier certificate in the latter year, and on this ground the Board found that the carrier did not qualify for interim operating authority.[137]

There has been no significant change in the situation. The applicant, a newly formed Delaware corporation, is a corporate shell that apparently was organized to permit Mr. Conner to preserve a tax loss of the predecessor company, a Florida corporation, which had an accumulated deficit of $369,332 as at June 30, 1964. The applicant does not have a firm organizational or financial basis for operations and is without any convincing prospects of achieving one. The corporation is dormant; its only assets are $1,000 contributed by Mr. Conner; and it has no aircraft, owned or leased, and no full-time employees. While Mr. Conner has offered to guarantee personally up to $500,000 for initial operations, the facts relied upon to establish his ability to do so are not impressive. The bulk of his assets consists of used aircraft and related parts and equipment, not independently valuated, and much of which is not in operating condition or particularly suited to airline operations.

Holiday. This applicant is entirely a paper company. Its principals, Messrs. Neumann and North, as well as other proposed officers and employees, have some aviation back-

[137] Order E-19045, November 28, 1962.

ground, but the sum of their experience does not establish demonstrated capacity for the conduct of sustained and successful air carrier operations. The applicant did not present a balance sheet or other formal indicia of its present financial condition; it has no aircraft, owned or leased, no salaried employees, and no other equipment or facilities apart from some leased space at Midway Airport in Chicago.

Holiday asserts that for the first year of operations it would devote itself exclusively to conducting a "contract" cargo business of a kind which, according to the applicant, would not constitute common carriage and therefore would not require economic regulatory authority from the Board. Certification as a supplemental air carrier is desired in order to buttress the contemplated freight business and to allow for eventual expansion into passenger charter transportation.

The applicant's future operating and financial plans are elaborate but unconvincing. They are keyed initially to the execution of assertedly favorable contracts with large property shippers, including Sears and Roebuck, and later, to the issuance of a certificate as the result of this proceeding. However, despite the fact that the execution of such contracts was alleged to be imminent and the record was held open to receive copies of them, none was tendered. In the absence of such contracts, the house of cards collapses. Measured by its own presentation applicant's financial prospects then would lie only in some minor loans and the possibility of relatively small commitments, primarily from the organizers and their families.

In sum, the showing made by this applicant falls far short of the requisite degree of fitness contemplated by the statute.

ONA. ONA was once a dominant carrier among the supplementals but is now in bankruptcy, having conducted its last revenue flight in October 1963. It has no aircraft, owned or leased, and only two nonexecutive, full-time, salaried employees. The carrier was found financially unfit for transatlantic passenger charter certification by Examiner Wiser, and the final resolution of that and other issues is pending in the *Reopened Transatlantic Charter Investigation,* Docket 11908 *et al.*

ONA presented its case on two alternative assumptions: first, that it will not receive a transatlantic charter certificate; and second, that such a certificate ultimately will be issued to it. Even upon the basis of the carrier's projections, under the first assumption it would need not only a final discharge from bankruptcy, which has not been obtained, but also some $300,000 to $350,000 for the initial period of its operations. However, no source for financing of this magnitude was shown. Under the second assumption, ONA has written commitments for funds totaling $750,000 from Messrs. Hinckley and Marx, who would then become co-owners of the company.

Looking at the existing situation realistically, there is no alternative to a finding that ONA is financially unfit for certification as a supplemental air carrier. The carrier lacks adequate financial resources—and now the operating organization—and has not established that it has the capability of acquiring them under present circumstances. The action

the Board may ultimately take in the *Charter Investigation*, the consequences that may flow from it, and the avenues

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that may then be open to the carrier to pursue broader operating rights are, of course, wholly in the realm of speculation. Whatever the outcome there, this record admits of no conclusion but that ONA is now unfit.

Standard. This applicant, recently discharged from bankruptcy following the Board's action suspending its interim operating certificate for financial unfitness, has some $8,000 in office furniture and equipment to be turned over to it by Shields B. Craft, its president, general manager, and controlling stockholder. It has no other assets, no aircraft, owned or leased, no ground equipment and no paid employees.

The applicant's future financing is dependent on a Mr. S. H. Smith who did not appear and offer testimony in the proceeding. Mr. Craft testified to the existence of an oral understanding with Mr. Smith to furnish $100,000 in capital for the company. The net result of the arrangements with Mr. Smith, should they become legally binding, would be that control of the company would pass from Mr. Craft, an individual with vast experience in supplemental air carrier operations, to Mr. Smith, who has had a long association with surface transportation but who has no aviation experience. Further, the applicant's plans for instituting service are of a frugal and shoestring variety. They are dependent on an exceptionally favorable lease for aircraft and related services said to be available from Las Vegas-Hacienda Hotel Corporation, with whom Mr. Craft previ-

ously has been associated; upon token payments to supervisory employees for performance of their administrative and managerial duties; and upon an agreement of the officers to forego any salaries or other compensation until such time as the applicant returned a profit.

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While conceivably Standard might be able to reactivate some operations if all of its plans materialized, its presentation does not reflect the degree of qualification that should be required of a supplemental air carrier. Nor does it inspire confidence that the applicant would have the sustaining strength to meet the continuing requirement of fitness imposed by the statute.

Stewart. This applicant, composed of Mr. Edgar A. Stewart doing business as Stewart Air Service, participated in supplemental air carrier operations from about 1948 until early in 1962 when its air carrier operating certificate was the subject of an emergency suspension by the Administrator of the FAA. Thereafter revocation of the certificate was sustained by Examiner Caldwell, and the applicant did not prosecute a timely appeal to the Board. The applicant has not conducted any operations with transport type aircraft since the revocation and it does not hold interim operating authority.

At the time of the revocation Stewart's current liabilities were about double its current assets, and the carrier had a fleet consisting of four DC-3's and one DC-4, which were owned, and an additional DC-4 under lease. It has retained ownership of three DC-3's and one DC-4, as well as related equipment, and of this fleet the DC-4 and one DC-3 are in inactive status. Mr. Stewart asserts that only $25,000, which

could be obtained on a personal loan basis, would be needed immediately to reactivate operations and that an additional $100,000 could be raised if needed by mortgaging the aircraft. The availability of the bank loan is not reflected in any written commitment of record, and the valuation of the aircraft was not established by independent appraisal.

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Considering all the circumstances, the efficacy of applicant's plans for future operations is open to substantial question. While, as in the case of Standard, the applicant might be able to inaugurate some services, there has been no demonstration of abiding and sustained strength for assuring continual financial fitness. At best the financial capabilities reflected by the applicant's evidence are dubious, and they are insufficient to warrant certification.

Wholly apart, however, from this consideration it is concluded that the past conduct of the applicant shown by the revocation action is disqualifying, since the applicant cannot be found to possess the necessary compliance disposition. The violations at issue there stemmed from a failure to abide by safety regulations and therefore go to the heart of the Congressional concern in enacting P. L. 87-528. They were of such seriousness as to lead the Administrator to conclude that Stewart had "demonstrated such a lack of that degree of judgment, integrity, care and responsibility" that he could no longer find the carrier "properly and adequately equipped and able to conduct a safe air transportation operation."[138] While the applicant has sought to attack that determination collaterally by alleging

[138] Appendix A, p. 25, f.n. 45.

unfairness, discrimination, unwarranted persecution, etc., the ultimate decision was reached after full participation by the applicant and stands unimpeached. Nothing has been presented that would justify the conclusion that, after over three years of dormancy, the applicant is now qualified from a compliance standpoint.

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USOA. Originally a substantial supplemental air carrier, USOA's financial condition has so deteriorated in recent years that the Board was obliged to suspend and ultimately revoke its interim operating authority for lack of financial qualification. In taking the revocation action the Board found that the applicant was "totally and irredeemably financially unfit." [139]

This record provides no basis for optimism but simply reenforces the Board's earlier determination. Most of the evidence offered here by the applicant was before the Board in the form of exhibits in Docket 13908 at the time the revocation order was entered. Subsequently the applicant has found it necessary further to deplete its flight equipment by aircraft sales in order to keep its head above water. Even so, however, USOA's most current balance sheet as at December 15, 1964, shows current assets of approximately $318,000 and current liabilities of about $950,000. The applicant obviously would require substantial additional financing and no possible source for it was shown.

The Remaining Applicants. The fitness of the remaining applicants is not seriously challenged, except for a general argument advanced by the Joint Intervenors and reserva-

[139] Order E-21562, December 7, 1964, p. 12.

tions expressed by the Bureau as to three applicants. The Joint Intervenors assert that none of the applicants is fit to provide service in overseas and foreign areas, primarily on the grounds of insufficient facilities, inadequate operational projections, the lack of evidence concerning

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the availability of landing rights, etc. These arguments are all of the type previously considered and rejected.

The Bureau's reservations concern Modern, Vance, and Zantop. In view of the marginal financial condition of the first two, the Bureau would limit their certification to a three-year period. Zantop holds not only an interim certificate as a supplemental air carrier but also an exemption from the certification requirements of section 401 of the Act and the tariff provisions of section 403 to the extent necessary to permit it to conduct its cargo services under long term contracts with Ford, General Motors, and Chrysler. The exemption was originally deemed necessary because the automotive operations do not fit squarely within the usual concept of planeload charter service, since they involve the commingling of the property of the three companies on the same aircraft. The Bureau finds Zantop only conditionally qualified, not on account of any doubts concerning its financial and operating strength, but because of the carrier's "stated inability to separate its non-regulated contract services from its supplemental operations." [140] The Bureau's position is that the Board lacks the legal power to continue the exemption indefinitely, and it therefore urges that any award to Zantop be conditioned upon submission of a "demonstrated plan of feasibly

[140] Bureau's brief to the Examiner, page 37.

separating its contract operation from its supplemental services and its commitment to adhere to such special regulations and restrictions as the Board may impose." [141]

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As the Bureau points out, both Modern and Vance are small carriers with a history of limited civil charter sales efforts, questionable financial bases, and marginal financial condition. However, rather than restrict their period of certification, the more preferable course, and the one followed here, is to take these considerations into account by limiting the participation of these carriers to markets which will not unduly tax their resources but which will, at the same time, afford them adequate opportunities for growth. Aside from the additional burdens of litigation, short term certificates are highly undesirable as impediments both to the development of sound operational plans and the ability of the carriers to attract financing. As far as the duration of their certificates is concerned, Modern and Vance should be certificated on a basis of equality with the other successful applicants. The Board has ample power to exercise continuing surveillance over their activities in order to assure protection of the public, a power which it has not hesitated to exercise in the past.

The Bureau's arguments as to Zantop are precluded by all that has gone before. In approving the transfer of Coastal's supplemental air carrier certificate to Zantop the Board found that continuation of Zantop's automotive services while it held supplemental authority would be in the public interest. It therefore granted Zantop an exemption which was to continue in effect "for such period

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[141] *Id.* at p. 39.

as Zantop holds authority to engage in supplemental air transportation," and the Board also imposed conditions designed to prevent any undesirable consequences that might otherwise flow from the carrier's dual operations.[142]

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Again, after the enactment of Public Law 87-528 and despite specific arguments directed to its alleged lack of legal authority, the Board found that (1) the automotive exemption "is, and will continue to be, in full force and effect;" and (2) there was no reason to disturb its earlier findings concerning the need for and desirability of the exemption.[143]

Nothing has occurred since the entry of Order E-18864 to change the situation from either a policy or legal point of view. There is no evidence nor even a contention that Zantop has failed to adhere to the conditions previously imposed by the Board. The only difference in the facts affecting Public Law 87-528 is that the phase-out period for individually ticketed and individually waybilled authority has expired, so that individual services are no longer available to any supplemental air carrier except to the extent that they may be authorized under section 417 of the Act. However, the imminent expiration of the transitional authority for individual services was fully known to the Board when it entered Order E-18864; and Zantop neither sought nor obtained such authority. In sum, there has been no change in the facts or the law, as the Board has interpreted it, that would support the Bureau's position.

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[142] Order E-18318, May 9, 1962.

[143] Order E-18864, October 5, 1962.

(10133, 10134)

Financial and revenue data and other pertinent facts going to questions of qualification appear in Appendices A and C and have been considered in connection with the needs for service and the selection of carriers. Except

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for the applicants specifically found unqualified, it is concluded that all applicants are fit, willing, and able to receive certificates as supplemental air carriers of the kind and to the extent recommended herein.[144]

THE REGULATION ISSUES

Largely as the result of the course of the historical development of the supplemental air carriers, there is now a veritable maze of regulations which bear in varying degrees on their charter operations. Some regulatory prescriptions are included in their interim operating certificates, and those provisions together with Part 207 govern their domestic charter operations. Additional terms, conditions, and limitations of general applicability are set forth in Part 208. In addition, the transatlantic passenger charter operations of the supplementals holding such au-

[144] On brief to the Examiner Lake Central asserts, for the first time, that Purdue cannot be found fit because the applicant's own exhibits show that it violated the Act on at least 17 flights during 1963 by charging less than its published charter rates. Although Purdue's exhibits were available well in advance of the hearing, neither Lake Central nor anyone else addressed themselves to this question with evidence or argument during the course of the proceeding, and it would be obviously unfair to lend any weight to the complainant's allegations at this juncture. In any event, it seems clear that, even if established, violations of the type complained of would not be disqualifying per se in view of Purdue's otherwise exemplary record. If Lake Central is seriously concerned with the problem, ample avenues are open to it to make its complaint known to the Board's Bureau of Enforcement.

thority are separately regulated by the extensive and detailed provisions of Part 295. And finally, if, as has been recommended, supplemental air carriers are now to be permitted to perform all-expense tour charters, still further implementing regulations will be needed.

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While each of the existing regulations serves a specific and necessary purpose, they are not altogether compatible in degree, type, extent, or effect of their regulatory provisions. To illustrate, Part 295 sets forth in detail standards to gauge whether groups which seek to participate in transatlantic charter movements are charterworthy. Nonetheless, this is still a substantial and constantly recurring problem area. In contrast, Part 207 is of the bare-bones variety, and this regulation in conjunction with the interim operating certificates of the supplementals contains only the basic requirements that (1) domestic charter trips do not include flights for which members of the general public have been solicited, and (2) supplemental air carriers may not charter aircraft to travel agents or others who provide or offer to provide transportation to the general public. As later appears, this approach also has left sizeable voids in regulation and has given rise to troublesome problems of interpretation in determining the permissible scope of domestic charter operations.

This proceeding is not a practical vehicle for formulating an acceptable final solution for all of these varied and interrelated problems. A major difficulty has been that unlike the normal rulemaking proceeding in which a specific proposal is advanced at the outset for comment, the suggestions of particular parties for rule changes were

generally not known until after the close of the record. Some parties sought to direct themselves to these questions on brief.. Thus, for example, the Bureau appended a new 25-page proposed regulation to its brief and the applicant

World has also made detailed suggestions. However, many of the proposed revisions have not been the subject of comment or argument, much less evidence, and to this extent the present record does not provide a basis for the exercise of sound and informed judgment.

All these circumstances make it highly desirable that the Board—when the results of this proceeding are known, if not before—undertake by rulemaking proceedings a comprehensive review of all its charter regulations. Primary objectives would be to achieve as much simplification and standardization as possible, as well as to clarify the differences, if any, applicable to the charter operations of the various classes of air carriers. The greatest possible uniformity and equality of application in standards governing all of the charter operations of the supplemental air carriers would be highly beneficial to the Board, the carriers, and the public.

Pending a long term solution, some means must be devised as a temporary expedient to permit prompt implementation of the new authority recommended. The most desirable way of achieving this result would be along the lines of the method suggested by the applicant World. This would involve the recodification and expansion of Part 208 into two subparts—one generally incorporating the present provisions of the regulation, and the other a new subpart setting forth all of the requirements concerned with the

charter authority of the supplementals granted herein. The new subpart would be tailored after the existing Part 295 with such technical and substantive changes and additions as may be warranted and would be applicable to all in-

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terstate, overseas, and foreign supplemental air transportation, except for transatlantic passenger operations which would continue for the present to be governed by Part 295. This approach has the advantage of placing regulatory requirements relating to the operating rights of the supplementals in two regulations (Parts 208 and 295) rather than in three if the alternative of an entirely new and separate regulation were selected.[145]

Specific regulation issues will now be considered.

All-Expense Tour Charters. The threshold decision to be made with respect to all-expense tour charters is the degree of regulatory control that should be exercised over their operation, for the answer to this question will determine the type of regulation that is necessary. There are basically two alternatives. The first is the one supported by the applicants and the Bureau with some modifications —a blanket exemption regulation modeled after the proposed Part 378, which the Board proposed as an interim measure to give the supplemental air carriers all-expense tour authority for interstate and overseas supplemental air transportation pending final decision in this case.[146]

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[145] An amendment of Part 207 may be desirable in order to make clear that henceforth it would apply only to air carriers other than supplemental air carriers. Also, Part 295 should reflect any substantive changes made here.

[146] Final action on this proposal subsequently was deferred. See SPDR-6, January 5, 1965, and SPDR-6A, April 27, 1965, Docket

(10137, 10138)

Under such a regulation, any persons other than the supplementals themselves who are engaged in the formation of groups for all-expense tours (tour operators) would be

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granted exemptions from the certification requirement and from otherwise applicable provisions of Title IV of the Act to the extent necessary to permit them to provide such tours using aircraft chartered from supplemental air carriers, provided that the tour operators and the carriers complied with other conditions and provisions of the regulation.

The other alternative is a prior approval procedure under which no all-expense tour charters could be operated without specific and advance Board approval. This latter alternative would obligate the Board to screen all applications individually and to grant such approvals, as well as such exemptions to individual tour operators, as it found to be in the public interest. The pre-flight authorization requirement would be analogous to the present British system and was used by the Board in connection with the interim rights granted to World and TIA authorizing the operation of planeload transpacific passenger charters until disposition of their applications for permanent certificates in this proceeding.[147]

There are, of course, substantial considerations that would support use of a general blanket exemption. Such an approach clearly would give the carriers the greatest

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15777. While proposed Part 378 is not physically included in this record, all parties have referred to it freely throughout the course of this proceeding.

[147] Orders E-21304, September 21, 1964, and E-21574, December 9, 1964.

degree of operating flexibility; it would minimize the administrative burdens on both the carriers and the Board and remove the Board from the minutiae of day-to-day business relationships; and it would eliminate many of the last minute uncertainties that invariably arise with a prior approval procedure. Further, the general exemption reg-

ulation obviates the necessity of wrestling with difficult questions that could be presented concerning the financial qualifications and capabilities of participating tour operators.

As important as these considerations may be, they are outweighed by the clear necessity that the Board exercise firm control over the scope and direction of the all-expense tour charter program during its initial and formative stages. In short, the stakes are too high in terms of public protection and the development of a sound air transportation system to warrant general relief from regulation at this time.

History demonstrates that it is much easier and generally more satisfactory subsequently to liberalize authority as needed than to contract it, once granted. This is particularly true where, as here, the authority is novel and experimental in nature, involving many elements of the unknown and the untried. While the more reasonable expectation is that only the better qualified tour operators would seek to participate in the provision of all-expense tour charters, that result cannot be a certainty. Too little is known concerning them; and the plans of the supplementals themselves are set forth in only the most general terms. Further, although under either approach there should be

no undue adverse impact upon the certificated route carriers, the fact is that the pre-flight authorization requirement would provide the Board with more adequate means to assure orderly growth of this facet of supplemental air carrier operations in relation to other components of the air transportation system.

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The substantial additional burdens that would fall on the carriers and the Board from individual authorizations cannot be lightly dismissed, and it is true that such a procedure would impede the carriers' freedom of action. When, however, the choice is between minimum administrative supervision and maximum operating flexibility, on the one hand, and the ultimate in protection of the public, on the other hand, the Congress has left no doubt where the burden must fall. The essence of Public Law 87-528 is that the financial condition of any supplemental air carrier must be sufficiently strong to provide adequate and continuing protection of the public, and to this end Congress imposed the continuing fitness requirement on the carriers and gave the Board broad surveillance powers. In the all-expense tour charter the tour operator rather than the carrier becomes the real promoter with the primary financial obligation to the public, and obviously the basic statutory objectives should not be compromised indirectly by insufficient guarantees against his incompetence or financial irresponsibility. Even though many salutary conditions of general applicability can be devised, there is no escaping the fact that only by considering each individual application can the Board provide the maximum

safeguards for the public. If experience shows that the prior approval procedure is too severe and unneeded for public protection, it will be time enough then to consider its relaxation.

It is also worthy of note that problems of major concern involving the public, ticket agents, and the predecessors of the present supplemental air carriers have existed in the past. Abuses of the public perpetrated by certain ticket agents became so prevalent and so aggravated at one time

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that sections 411 and 902(d) of the Act were amended to bring ticket agents within their coverage, and the Board since has been especially vigilant in such matters.[148] Individual authorizations for tour operators participating in all-expense tour charters should prevent the creation of a breeding ground for any comparable activities.

In form, the prior approval procedure should make the filing of an application for a Statement of Authorization (and an exemption for the tour operator) and the issuance of such authorizations prerequisites to the operation of all-expense tour charters, much in the manner of the provisions governing the interim authority now held by TIA and World for transpacific planeload passenger charters. The regulation should also prescribe general conditions and requirements that must be met by any applicant. If, upon consideration of an application, the Board found that the proposed all-expense tour charter flight or flights complied

[148] Public Law 538, 82nd Cong., 2nd Sess., approved July 14, 1952. See *e.g.*, S. Rep. No. 1508 (S. 2690), 82nd Cong., 2nd Sess. (1952); H. R. Rep. No. 2420 (S. 2690), 82nd Cong., 2nd Sess. (1952).

with those requirements and were otherwise in the public interest, it would issue the Statement of Authorization and any necessary exemption. The Board would, of course, reserve in its regulation the right to withhold, condition, or limit any particular authorization as the public interest might dictate. The provisions for individual applications necessarily would require not only a showing of compliance with all general regulations but would also call for

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the disclosure of any needed information concerning the operating carrier and the tour operator, the promotional literature to be used in promoting the tour, etc.

It is of the utmost importance that the substantive regulatory provisions be of such a nature that they will maintain the integrity of the group concept while, at the same time, affording the opportunity for operation of an attractive and marketable service without undue diversionary consequences. Subject to needed revisions to reflect the change from a blanket regulation to individual authorizations for carriers and tour operators, many of the provisions of proposed Part 378 are acceptable in their present form. Included in this category are most of the definitions in the proposal as well as the provisions concerning the execution of charter contracts, the filing of tour literature, tariffs, surety bonds, contracts between tour operators and tour participants, post flight reporting, waivers, enforcement, and the issuance of advisory opinions. For the most part the parties have not seriously contested these proposals.[149]

[149] ASTA opposes the condition calling for a surety bond in the amount of twice the aircraft charter price and suggests that the

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The real controversy centers around the way in which all-expense tours and all-expense tour charters should be defined, specifically (1) the duration and stop requirements that should be imposed, (2) the number of groups that could be transported on a single aircraft, and (3) the price to be charged the passenger. On the first point, views range from a tour duration of no less than seven days, with no multiple stop requirement, to the 10-day, three-stop minimum suggested in proposed Part 378.

A requirement that all-expense tours involve at least seven days, with overnight hotel accommodations at a minimum of two cities of destination no less than 50 miles from each other, is realistic in the light of all the evidence. The most productive all-expense tours, at least initially, are likely to be of the resort type where the passenger's interest is more in relaxation than in sightseeing as such. Tours that involve the minimum in moving about, as well as relatively short duration, have the greatest potential for accommodating that interest. The two-stop provision should be sufficient to prevent any significant inroads on purely point-to-point transportation without, at the same

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face amount of the bond be reduced to one-half the aircraft charter price, with an option in the tour operator alternatively to create a trust account consisting of one-third of his receipts from the sales of the tour. The bonding provisions suggested by the Board are patterned after those of the Interstate Commerce Commission and there has been no convincing demonstration that they are excessive. Further, since the financial capability and reliability of the tour operator are likely to be the points of greatest vulnerability in the all-expense tour charter program, the wiser course is to maintain high standards in this respect until actual experience indicates that less exacting requirements will be fully adequate to safeguard the interests of the traveling public.

time, destroying the attractiveness of the tours for resort-minded travelers.

As far as duration is concerned, a substantial segment of the business community grants vacations by the unit of one week or more, and the evidence of the Joint Intervenors themselves shows that a large number of the tours now offered are for seven days. If the supplementals are given the authority to provide tours for a week or multiples thereof, they will achieve significantly greater operating flexibility, particularly in organizing their operations on

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a "back to back" basis and thereby holding ferry mileage to a minimum. Also, it is not to be forgotten that the primary promotional aim of the all-expense tour charters is to broaden the base for air transportation generally, and that to accomplish this purpose it will be necessary to reach the younger and lower income individuals. To them not only price, but also shorter tour durations to meet business vacation periods, can be decisive considerations. Any duration and minimum stop requirements which are more restrictive than those recommended will considerably narrow the markets open to the supplementals and will also substantially reduce the economic value of all-expense tour charter authority to the carriers themselves.[150]

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[150] Some parties, although acknowledging that multiple stops may generally be a necessary requirement, contend that single destination tours should be permitted under certain circumstances. Thus, for example, ASTA takes the position that they should be permitted when the point of destination "has no regular scheduled air service direct from the point of origin" (ASTA brief, p. 8), and AAXICO requests the right to operate them "where no U. S. flag carrier performs scheduled one-plane-through service between any point within a 75 mile radius of the point of origin and within a 75 mile

While it already has been concluded that the supplemental air carriers should not be permitted to commingle tour groups aboard the same aircraft under split charter arrangements with different tour operators, no persuasive reasons have been advanced for precluding a supplemental air carrier from carrying more than one all-expense tour group on a single aircraft where the entire aircraft is being operated under one charter with one tour operator. In

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such a situation there is not the same danger to the integrity of the group concept. And the carriers, of course, would benefit greatly from the increased measure of operational freedom, particularly in the operation of sightseeing as contrasted to resort type tours. Further, with the ever expanding seating capacity of jet aircraft, which are increasingly in demand, insistence on the one-aircraft, one-group formula would restrict the economic feasibility of the sale and promotion of tour charters and might well unduly magnify problems involved in the ground portion of the tours, such as those associated with hotel accommodations and surface transportation. A restriction that would limit the use of a single aircraft to three all-expense tour groups where the aircraft is operated under one charter to one tour operator, with each group to consist of 40

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radius of the point of destination of the inclusive tour charter air transportation" (AAXICO brief, p. 35). As is readily apparent, any provision along these lines would present substantial problems of language and interpretation. This type of authority is not essential to the initial all-expense tour charter program but is a matter of liberalization that can best be considered later after some actual operating experience under the regulation.

or more passengers, is a reasonable resolution of the problem under all the circumstances.

There is wide variance in the evidence and the positions of the parties concerning the price that should be charged the all-expense tour charter passenger. At the lower end of the scale is the actual practice of European countries. Sweden, for example, apparently permits a total package price of roughly 75 percent to 80 percent of the individual fares for scheduled service. In Great Britain, where inclusive tours have been eminently successful in traffic development, the rule generally is that the tour must cost the passenger not less than the lowest published round trip air fare between the points served on the day and at the time of flight. On the other end of the spectrum is the cost proposal advanced by the Board in proposed Part 378, *i.e.*, the charge for the tour must be at least 120 percent of the lowest basic fare (excluding promotional and dis-

count fares) which would be charged by the scheduled carriers for the air transportation provided on the tour. Several other alternatives have been put forth that fall somewhere between these extremes.[151]

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[151] ASTA, for example, suggests the following three alternatives without endorsing any particular one: (1) 100 percent of the lowest scheduled individual or group fare plus 3 percent of such fare for each day of tour duration; (2) 100 percent of the basic fare, or in the alternative, 125 percent of a discount fare, whichever is lowest; and (3) a sliding scale under which the ground elements shall cost at least $15 if the lowest available basic scheduled fare is $75 or less, 20 percent of the air fare when such fare is between $75 and $175, and $35 where the lowest air fare is $175 or more. The latter alternative is taken from the ATC resolution defining independent tours for the purpose of determining the 3 percent tour override commission.

The matter of price is the most significant single key to successful all-expense tour charter development, and it presents a particularly difficult determination in view of the lack of any empirical basis for judgment in American air transportation experience. The method proposed by the Board of pegging the price to a percentage of basic fares for scheduled services is a desirable one, since it has the advantages of simplicity and ease of application. Weighing all the considerations, however, it is concluded on the basis of the present record that the particular percentage of 120 percent is too high to permit significant tour charter development. Such is the opinion of travel agents which would be concerned with the problem, a factor that is entitled to at least some weight. Further, while there are obvious differences, the British experience demonstrates at the least that the remarkable development of inclusive tours there has been achieved with no serious injury to the

scheduled carriers, even though the inclusive tour charter cost is computed at the level of 100 percent of the scheduled fares and there are no formal tour duration or multiple destination requirements.

A reasonable middle ground for launching the all-expense tour program, and the one recommended here, is a charter tour price determined on the basis of 110 percent of the lowest basic air fare, provided, however, that the ground elements shall cost at least $15. Such a provision would moderately enhance the price appeal and marketability of all-expense tour charters without otherwise disturbing the basic factors which distinguish them from individually ticketed travel, and the certificated route carriers would

still maintain the advantage of their promotional and other discount fares. Since all-expense tour charters would be authorized individually rather than by blanket exemption, the Board would be in a position to exercise any control necessary to assure that they are not unduly diversionary or harmful in other respects to the total air transportation system.

Other Charter Services. Apart from all-expense tour charters, virtually all the evidence concerning regulation issues has been directed to the narrow but highly significant area of mass media advertising in domestic charter movements or closely associated problems of solicitation of the general public and carrier-agent relationships. It is clear from the record that in the past the supplemental air carriers have been unable to exercise effective control over questionable advertising practices and other improper or undesirable activities of charter organizers and agents, a result that no doubt has been due in significant measure

to the absence of the same degree of specificity and detail in rules governing domestic charters as exists in Part 295 regarding transatlantic passenger charters.

During the pendency of this proceeding the Board amended Part 207, Part 295, and the interim certificates and authorizations of the supplementals to prohibit generally the operation of charter flights advertised in mass media, regardless of whether the advertisements are directed to members of specific groups or to members of the general public.[152] Since there is a clear and undisputed

[152] ER-408 and 419 as amended by ER-427 and 428 effective March 15, 1965; Orders E-21610, December 23, 1964, and E-21837, February 25, 1965.

need to carry over the same prohibition in any regulations adopted here, no useful purpose would be served by simply reciting the evidence in this proceeding which corroborates the Board's determination.

Most of the other problem areas are fairly reflected in an advisory letter of the Board's then Director, Bureau of Enforcement, which was received in evidence and used as the basis for questioning many of the participating witnesses.[153] This letter outlined various objectionable practices that were prevalent in the organization, solicitation, and operation of domestic charter flights by the supplemental air carriers, including the following: (1) advertising charter flights, using the names of participating organizations, before a firm commitment had been concluded with an air carrier for their operation and without specifying the air carrier or noting its designation as a supplemental

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air carrier; (2) soliciting organizations that by reason of their extremely large size, their perfunctory or automatic membership requirements, or the vagueness of their identity were not charterworthy but in fact constituted segments of the general public; (3) permitting the participation of persons on charter flights who were not members of the chartering organization when the charter agreement was executed but who joined subsequently as the result of the inducement of the advertised charter flight; (4) for charters entered into on behalf of a single chapter, soliciting the participation of members of another chapter or chapters

[153] Letter of J. G. Adams, Director, Bureau of Enforcement, December 11, 1964, to Capitol, World, and TIA (JI-1158).

of the same national or regional organization for whom the agent executing the charter agreement had no authority to act; (5) undue flexibility in the pro rata charter price or the guarantees made in connection therewith, which resulted in (a) the total cost of the package attributable to air transportation not being clearly ascertainable by dividing the air carrier's charter price by the number of passengers, (b) arbitrary adjustments of the price for the land portion on the basis of the number of seats actually sold, (c) failure to pass along any excess of amounts collected above the total package price to the passengers, and (d) express or implied guarantees as to the number of passengers and amount of revenue which made the agent, rather than the signatory charter organization, the real charterer; and (6) the return of funds collected from the charter group to the sponsoring organization under circumstances where it might be reasonably concluded that such a "donation" was either compensation for use of the sponsor's name or an unlawful rebate to the individual participants.

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The regulatory tools for coping with many of these difficulties will be provided if, as has been recommended, the basic scheme of Part 295 is extended to govern the interstate, overseas, and other foreign supplemental air transportation operations of the supplemental air carriers. The mass media prohibition now in Part 295 is directed to a type of activity which is a primary cause of widespread membership ineligibility (section 295.2(l)(1)); and the regulation is also clear in its requirements that (1) vague and ill-defined organizations are not charterworthy (sec-

tion 295.2(l)(2)), (2) participating members of a chartering organization must have been members at the time the chartering organization first gave notice to its members of firm charter plans (sections 295.2(k), 295.35(b)(1) and (d)), and (3) charges and collections in excess of the charter cost must be refunded to the charter participants (section 295.33(b)). However, in order to meet still other problems, additional provisions should be adopted which would specifically (1) prohibit all donations by travel agents to chartering organizations or groups and (2) limit participation in any given charter solely to the organization, or chapter or unit thereof, whose name appears on the contract with the air carrier as the charterer. Although there will always be questions of degree and difficulties of interpretation, provisions of this general type should be of

substantial assistance in eliminating many evils and will provide a sound basis for regulation.[154]

In addition to the foregoing there are numerous further proposals for amendments and changes in governing

[154] A related proposal supported by the Bureau, TIA, and World is the elimination of the so-called six months' rule. The present Part 295 requires not only that members of a chartering organization hold their membership when firm charter plans are announced but also creates an adverse presumption if they have not been members for at least six months prior to the starting flight date. While the evidence is not directed specifically to the six months' rule, the fair inference to be drawn from the record as a whole is that the six months' provision is unduly onerous, of little practical utility, and of doubtful enforceability. The requirement that a member participating in a charter flight have membership status when the flight is first arranged should be a sufficient demonstration of bona fide membership if the provision in the regulation for maintenance of a central membership list is retained.

regulations. The Bureau, for example, would (1) prohibit the payment of any commissions by a chartering organization to a travel agent; (2) relax the reporting requirements; (3) remove the labor charge ceiling and substitute a new formula for determining administrative costs; and (4) permit mixed passenger and cargo flights. The applicant World advocates (1) expanding the coverage of the definition of "immediate family" for the purposes of charter participation; (2) modifying existing provisions concerning charter costs and administrative details; (3) raising the commission payable by carriers to travel agents from 5 percent to 7½ percent; and (4) other miscellaneous changes, such as shortening the advance filing requirements when waivers are requested, eliminating the need for the

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"Statement of Supporting Information," and revising the tariff provisions governing the computation of ferry mileage. TIA would go still further on the carrier-agent commission and permit a maximum of 10 percent, and it also supports a new sliding scale for computing permissible administrative costs. While some or all of these suggestions may have merit they have not been the subject of evidence, comment, or argument in this case. Under the circumstances, the Board can best consider and evaluate them in connection with subsequent rulemaking proceedings.

The Recommended Regulation Changes. The regulatory provisions which have been recommended bear in varying degrees on substantially all of the present system of regulations governing supplemental air carriers. As noted initially, those particularly affected are Parts 207, 208, and 295. A new set of provisions must also be devised

for all-expense tour charters, and more refined and detailed requirements are necessary for other charter services. The Board, of course, has wide latitude in determining the form that regulations growing out of this case should take, and the ultimate determination of how best to proceed may be influenced substantially by the scope of the authority granted, particularly as it relates to all-expense tour charters and the extension of charter authority to the carriage of passengers in overseas and foreign air transportation.

Considering the wide range of possibilities, little purpose would be served by encumbering this decision with the physical reproduction of the various and sundry regulations that will be necessary if a particular technique is selected and the precise recommendations made are adopted. Such regulations are voluminous and detailed;

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some needed changes are purely technical in nature; and a good many involve no more than physical transference of the existing provisions of Part 295 and the proposed Part 378. And, in view of the nature of this proceeding, the Board will, of course, have the benefit of exceptions, briefs, and argument directed to these matters. What is important for present purposes is the substantive content, and that subject already has been considered in detail.

Attached as Appendix F is a summary which outlines the various recommendations made with respect to the regulation issues and relates them to the present and proposed regulatory scheme. This appendix should provide the basis for translating such recommendations into regulation form to accompany the final decision in this proceeding.

(10153, 10154)

The Certificates

The remaining questions relate to the certificates to be issued for supplemental air transportation, principally to their form and duration.

The present interim certificates and authorizations of the supplemental air carriers were predicated on the authority of Public Law 87-528. With the transition to certificates of public convenience and necessity which will be issued pursuant to the Federal Aviation Act itself as amended by that law, some changes are necessary or desirable. Authorizations must now be expressed in two certificates, one embodying the supplemental air transportation that the Board may authorize and the other setting forth the authority granted which is subject to the approval of the President pursuant to section 801 of the Act. In addition,

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the certificates can be simplified considerably. Some of the provisions of the interim certificates are now more appropriate for inclusion in a general regulation, such as those dealing with the use of certificated names by supplementals, written agreements with ticket agents, transfers of control, and some of the definitions; and others are no longer necessary, notably those which reiterate the statutory language concerning continuing fitness and the modification, suspension, or revocation of certificates. Recommendations on these matters are reflected in the form of certificates attached hereto and in the suggested regulation changes set forth in Appendix F to this decision.[154a]

[154a] The attached certificates have been drawn on the assumption that the seasonal transatlantic authority granted American Flyers, Modern, TIA, and World will have expired by its own terms before the Board reaches final decision herein.

As far as duration is concerned, the objective must be to attain as much permanency and stability as can be achieved consistently with the public interest. Apart from all-expense tour charters, permanent certificates are clearly warranted in the interstate and military fields. The supplemental air carriers had demonstrated by their past charter operations in these areas that they are performing a useful public service responsive to a public need and the interests of the national defense without any significant adverse impact on the balance of the air transportation system. Split charter authority with respect to conventional passenger charters is basically no more than a refinement of authority presently held, granted in recognition of the advances in aviation technology. No reasons have been advanced on this record that would justify qualifying the future participation of the supplementals in domestic and military air transportation.

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With respect to the balance of their authority, however, the more persuasive considerations point to some limitations on duration. All-expense tour charters, both domestically and internationally, are a new concept in the American air transportation system. Much is yet to be learned about such tours, and the provision of adequate assurances for public protection looms as an overriding element in the total picture. Similarly, although there are less uncertainties in the case of traditional charters, it is true that, in contrast to prior limitations which permitted only relatively minor participation by the supplementals in foreign civil passenger transportation, such carriers would now be extended on a selective basis into all areas of the world open to them under the issues in this proceeding. In short, despite the abun-

dance of promotional and experimental considerations that support the authorization of both all-expense tour charters and conventional overseas and foreign charter operations, these particular services have yet to withstand the acid test of actual operating experience in untried areas.

The foregoing are all factors which dictate caution in the exercise of the Board's certification power. Under all the circumstances, it is concluded that any advantages for the carriers from permanency with respect to all-expense tour charters and other civil charter authority in overseas and foreign air transportation are outweighed by the considerations favoring certificates of limited duration. The latter course will permit a review of operations after an experimental period and will provide for development in the manner most consistent with the broader public interest.

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Certificates for five years, which was the duration specified by the Board in issuing supplemental air carrier certificates for transatlantic passenger charter operations, should allow for an adequate experimental period.[155]

Two other matters warrant brief comment. On brief, eight of the local and short haul carrier intervenors attack the legality of all-expense tour charters on grounds previously considered and rejected.[156] In addition, while conced-

[155] *Cf. Transatlantic Charter Investigation*, Orders E-20530 and 20531, March 3, 1964 (Appendix A, pages 28-29).

[156] These intervenors also make the novel contention that all-expense tour charters would in reality be "special services" which are reserved to the certificated route carriers pursuant to section 401(e)(6) of the Act. However, the prior discussion makes it clear that under the terms and conditions recommended all-expense tours provided by chartering aircraft to tour operators, rather than

ing that there is room for some conventional charter service by supplementals, they suggest that a limitation be placed in the certificates which would confine supplemental authority to charter flights involving a one way haul or more than 500 air miles. They assert that such a limitation would afford the locals a modicum of protection against diversion of traffic from their scheduled services.

No need has been shown for any such restriction and its adoption would unnecessarily restrict the flexibility and utility of supplemental air transportation services. The past operations of the supplementals have had no significant impact upon the local service carriers; as to the future, these intervenors present no estimates of actual diversion

but only surmise. Further, as the objectors themselves concede, the predominant past use and greatest future potential for supplemental services are in the realm of long haul services, in which case the local carriers have nothing to fear from their operation. And the particular terms, conditions, and regulations recommended will, of course, minimize still further any diversionary consequences. Insofar as these intervenors are contending that the supplementals have not shown that specific transportation needs exist in particular short haul markets, the short answer is that they are not required to do so, any more than the certificated route carriers have been required to make an independent showing of need with respect to each and every operation

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through promotion and sale by the supplementals themselves, have sufficient cohesiveness to qualify as legitimate charters within the statutory concept.

that is possible under their certificates. In sum, the general considerations supporting the award of certificates for supplemental air transportation afford no sound basis for differentiation predicated on the length of haul involved.

The applicant World, standing alone among the applicants, suggests that it and carriers similarly situated be designated, presumably in their certificates, as "independent air carriers." The only reasons given are that World prefers such a designation and it is one of common usage in the British air transportation system.

This suggestion is rejected. While in the developmental period the Board was free to and did select various designations for this group of carriers, such as "nonscheduled," "large irregular," and the like, the term "supplemental air carrier" is now ingrained in the statutory scheme with a

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fixed meaning and content. Deviations are inconsistent with the statutory purpose, and the use of additional designations in all likelihood would enhance rather than alleviate any public confusion. In any event, the reasons advanced for this request are neither substantial nor persuasive.

Summary of Findings and Conclusions

Upon the basis of the foregoing and all the facts of record, it is recommended that the Board find that:

1. The public convenience and necessity require the issuance of certificates in the form attached hereto to

(a) American Flyers, Capitol, Johnson Flying Service, Modern, Purdue, Saturn,[157] Southern, Trans Interna-

[157] The merged Saturn-AAXICO, as proposed in Docket 15675.

tional, Vance International,[157a] World, and Zantop authorizing supplemental air transportation between the 50 States and the District of Columbia with respect to persons and property;

(b) Johnson Flying Service and Purdue authorizing supplemental air transportation with respect to persons and property between the United States and Canada;

(c) American Flyers, Modern, Vance International, and Zantop authorizing supplemental air transportation with respect to persons and property between the United States, on the one hand, and points in Canada and Mexico, on the other hand;

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(d) American Flyers, Capitol, Saturn,[158] Southern, TIA, and World authorizing supplemental air transportation with respect to persons and property between the United States and the Caribbean area;[159]

(e) Trans International and World authorizing supplemental air transportation with respect to persons and property between the United States, on the one hand, and points in Central and South America, on the other hand;[160]

[157a] The proposed order would continue Vance's existing exemption permitting it also to conduct operations as an air taxi operator.

[158] See f.n. 157, *supra*.

[159] A point or points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba, the Leeward and Wayward Islands, or any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand.

[160] A point or points in British Honduras, the Canal Zone, Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, Panama,

(10159, 10160)

(f) Southern, Trans International, and World, authorizing supplemental air transportation with respect to persons and property between the United States, on the one hand, and points in the Transpacific area, on the other hand;[161]

(g) Capitol and Saturn authorizing supplemental air transportation with respect to property only between the United States, on the one hand, and points in the Transatlantic area, on the other hand;[162] and

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(h) all of the foregoing carriers authorizing air transportation with respect to persons and property on a planeload basis pursuant to contracts with the Department of Defense, without geographical or duration limitations.

2. The carriers listed in paragraph 1. hereof are each citizens of the United States within the meaning of the Act, and are fit, willing, and able properly to perform the supplemental air transportation hereinabove recommended to be performed by each of them and to conform to the pro-

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and in the countries on the continent of South America, on the other hand.

[161] American Samoa, Guam, Johnston Island, the Marshall Islands, Okinawa, Wake Island, and a point or points in Australasia, Indonesia, and Asia as far west as longitude 70 degrees east, on the other hand, via a transpacific routing.

[162] Between points in the 48 contiguous States of the United States, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

visions of the Act and the rules, regulations, and requirements of the Board thereunder.

3. The supplemental air transportation permissible under the aforesaid certificates authorizing passenger and property services shall include authority to provide (1) conventional planeload passenger and cargo charters; (2) split charters with respect to conventional passenger charters, provided that a maximum of three groups, with each group to consist of 40 or more passengers, can be carried aboard the same aircraft; and (3) all-expense tour charters to tour operators.

4. Except for all-expense tour authority, the aforesaid certificates authorizing supplemental air transportation between the 50 States and the District of Columbia should be permanent. Domestic all-expense tour authority, and all certificates for overseas and foreign supplemental air transportation, should be granted for an experimental period of five years.

5. The public interest requires that the Economic Regulations governing supplemental air carriers be revised, supplemented, and reissued in accordance with the recommendations set forth in Appendix F hereto.

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6. Conner Air Lines, Inc., Holiday Airways, Inc., Overseas National Airways, Inc., Standard Airways, Inc., Stewart Air Service, and United States Overseas Airlines, Inc., do not possess the qualifications necessary for certification

(10161)

as supplemental air carriers and their applications should therefore be denied.

7. Except to the extent otherwise indicated, all applications, motions, and requests involved in this proceeding should be denied.

Appropriate orders and certificates are attached.

/s/ ROBERT L. PARK
Robert L. Park
Hearing Examiner

Attachments

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UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the

Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision;

IT IS ORDERED:

1. That a certificate of public convenience and necessity for supplemental air transportation in the form attached hereto be issued to each of the following: American Flyers Airline Corp., Capitol Airways, Inc., Johnson Flying Service, Inc., Modern Air Transport, Inc., Purdue Aeronautics Corp., Saturn Airways, Inc.,[1] Southern Air Transport, Inc., Trans International Airlines, Inc., Vance International Airways, Inc., World Airways, Inc., and Zantop Air Transport, Inc.;

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[1] The merged Saturn Airways, Inc.-AAXICO Airlines, Inc., as proposed in Docket 15675.

(10162, 10163)

2. That said certificate shall be signed on behalf of the Board by its Secretary, shall have affixed thereto the seal of the Board, and, subject to extension of their effective dates in accordance with the provisions of said certificates, shall be effective on ;

3. That upon the effective date of this order or of the order issued in this proceeding directing the issuance of certificates of public convenience and necessity for overseas and foreign supplemental air transportation, whichever shall later occur, the interim certificates and interim authority of the supplemental air carriers listed in paragraph 1 hereof shall cease to be effective;

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4. That, unless sooner terminated the exemption issued to Vance International Airways, Inc., as the successor to Vance Roberts, pursuant to Orders E-19112, December 19, 1962, and E-21648, January 6, 1965, which exempts the carrier from the provisions of Title IV of the Act and section 298.2(a)(2) of Part 298 to the extent that they would otherwise preclude it from operating air taxi services pursuant to Part 298 while holding supplemental air carrier authority, shall continue in effect so long as Vance International Airways, Inc., holds an effective certificate to engage in supplemental air transportation; and

5. That, except to the extent otherwise indicated, all applications, motions, and requests involved herein be and they hereby are denied.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

Issued pursuant to
Order No. E-

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

[NAME OF HOLDER]

PART I—CHARTER SERVICE

[NAME OF HOLDER] is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Public Law 87-528 and Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in the following:

1. Supplemental air transportation with respect to persons and property between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia.

2. Interstate air transportation of persons and property on a planeload basis pursuant to contracts with the Department of Defense except to the extent that such air transportation involves operations between

(10164, 10165)

places in the same Territory or possession of the United States, subject to the provision that any such services performed between points in the contiguous 48 states, on the one hand, and Alaska and Hawaii, on the other hand, shall be furnished at the rates and compensation and in accordance with the terms specified in such contracts. The rates and compensation specified in such contracts shall be computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders. For the purpose of this Part, the term "planeload basis" refers to air transportation pursuant to contracts with the Department of Defense where the entire capacity of one or more aircraft has been engaged by the Department.

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PART II—TERMS, CONDITIONS, AND LIMITATIONS

This certificate, and the services authorized herein are subject to the following terms, conditions, and limitations:

(1) The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Economic Regulations for interstate supplemental air transportation.

(2) Nothing in this certificate shall be construed (a) as authorizing air transportation within the State of Alaska, or (b) as granting an exemption from the provisions of section 403 of the Act.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms,

conditions, and limitations required by the public interest as may from time to time be prescribed by the Board, including but not limited to standards relating to liability insurance, performance bonds, minimum extent of service, and continuing fitness.

This certificate shall be effective on : *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of (Order E-), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time; and *Provided Further,* That the authority granted by this certificate authorizing the holder to operate all-expense tour charters in accordance with the applicable provisions of the Board's Economic Regulations shall terminate five (5) years after the effective date hereof.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the day of

HAROLD R. SANDERSON
Secretary

(SEAL)

(10166)

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UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the

Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision;

IT IS ORDERED:

1. That certificates of public convenience and necessity for supplemental air transportation in the forms attached hereto be issued to American Flyers Airline Corp., Capitol Airways, Inc., Johnson Flying Service, Inc., Modern Air Transport, Inc., Purdue Aeronautics Corp., Saturn Airways, Inc.,[1] Southern Air Transport, Inc., Trans International Airlines, Inc., Vance International Airways, Inc., World Airways, Inc., and Zantop Air Transport, Inc.

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[1] The merged Saturn Airways, Inc.-AAXICO Airlines, Inc., as proposed in Docket 15675.

2. That said certificates shall be signed on behalf of the Board by its Secretary, shall have affixed thereto the seal of the Board, and, subject to extension of their effective dates in accordance with the provisions of said certificates, shall be effective on ;

3. That, except to the extent otherwise indicated, all applications, motions, and requests involved herein be and they hereby are denied;

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4. That this order shall become effective upon the date of its approval by the President of the United States.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON

Secretary

(SEAL)

THE WHITE HOUSE

APPROVED:

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(10168)

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Issued pursuant to
Order No. E-

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

AMERICAN FLYERS AIRLINE CORP.

PART I—CHARTER SERVICE

American Flyers Airline Corp., is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Public Law 87-528 and Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in the following:

1. Supplemental air transportation with respect to persons and property between any point in any State of the United States or the District of Columbia, on the one hand, and

(a) points in Canada and Mexico, on the other hand;

(b) a point or points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba,

the Leeward and Wayward Islands, or any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand.

2. The transportation of persons and property on a planeload basis pursuant to contracts with the Department of Defense in overseas and foreign air transportation, and in interstate air transportation to the extent that such planeload services involve operations between places in the same Territory or possession of the United States, subject to the provision that any such services shall be furnished at the rates and compensation and in accordance with the terms specified in such contracts. The rates and compensation specified in such contracts shall be computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders. For the purpose of this Part, the term "planeload basis" refers to air transportation pursuant to contracts with the Department of Defense where the entire capacity of one or more aircraft has been engaged by the Department.

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PART II—TERMS, CONDITIONS, AND LIMITATIONS

This certificate, and the service authorized herein, is subject to the following terms, conditions, and limitations:

(1) The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Economic Regulations for overseas and for-

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eign supplemental air transportation other than transatlantic supplemental air transportation.

(2) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board, including but not limited to standards relating to liability insurance; performance bonds, minimum extent of service, and continuing fitness.

This certificate shall be effective on
and the authority granted by paragraph 1. of Part I hereof shall terminate five (5) years thereafter: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of
(Order E-), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of

the Board, and the seal of the Board to be affixed hereto, on the day of

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on
in Order E-

(10170)

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(Capitol and Saturn)

Issued pursuant to
Order No. E-

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

[NAME OF HOLDER]

PART I—CHARTER SERVICE

[NAME OF HOLDER] is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Public Law 87-528 and Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in the following:

1. Supplemental air transportation with respect to persons and property between any point in any State of the United States or the District of Columbia, on the one hand, and a point or points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba, the Leeward and Wayward Islands, or any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand.

2. Supplemental air transportation with respect to property between points in the 48 contiguous States of the United States, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

3. The transportation of persons and property on a planeload basis pursuant to contracts with the Department of Defense in overseas and foreign air transportation, and in interstate air transportation to the extent that such planeload services involve operations between places in the same Territory or possession of the United States, subject to the provision that any such services shall be furnished at the rates and compensation and in accordance with the terms specified in such contracts. The rates and compensation specified in such contracts shall be computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules,

regulations, or orders. For the purpose of this Part, the term "planeload basis" refers to air transportation pursuant to contracts with the Department of Defense where the entire capacity of one or more aircraft has been engaged by the Department.

PART II—TERMS, CONDITIONS, AND LIMITATIONS

This certificate, and the service authorized herein, is subject to the following terms, conditions, and limitations:

(1) The service herein authorized is subject to the terms, conditions, and limitations prescribed by the

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Board's Economic Regulations for overseas and foreign supplemental air transportation other than transatlantic supplemental air transportation.

(2) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board, including but not limited to standards relating to liability insurance, performance bonds, minimum extent of service, and continuing fitness.

This certificate shall be effective on and the authority granted by paragraphs 1. and 2. of Part I hereof shall terminate five (5) years thereafter: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of (Order E-), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

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IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the day of .

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on
in Order E-

(10173)

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(Johnson and Purdue)

Issued pursuant to
Order No. E-

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

[NAME OF HOLDER]

PART I—CHARTER SERVICE

[NAME OF HOLDER] is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Public Law 87-528 and Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in the following:

1. Supplemental air transportation with respect to persons and property between any point in any State of the United States or the District of Columbia, on the one hand, and points in Canada, on the other hand.

2. The transportation of persons and property on a planeload basis pursuant to contracts with the Department of Defense in overseas and foreign air transportation, and in interstate air transportation to the extent that such planeload services involve operations

between places in the same Territory or possession of the United States, subject to the provision that any such services shall be furnished at the rates and compensation and in accordance with the terms specified in such contracts. The rates and compensation specified in such contracts shall be computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders. For the purpose of this Part, the term "planeload basis" refers to air transportation pursuant to contracts with the Department of Defense where the entire capacity of one or more aircraft has been engaged by the Department.

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PART II—TERMS, CONDITIONS, AND LIMITATIONS

This certificate, and the service authorized herein, is subject to the following terms, conditions, and limitations:

(1) The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Economic Regulations for overseas and foreign supplemental air transportation other than transatlantic supplemental air transportation.

(2) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(10174)

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board, including but not limited to standards relating to liability insurance, performance bonds, minimum extent of service, and continuing fitness.

This certificate shall be effective on and the authority granted by paragraph 1. of Part I hereof shall terminate five (5) years thereafter: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of (Order E-), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the day of .

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on
in Order E-

10175

(Modern, Vance, and Zantop)

Issued pursuant to
Order No. E-

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

[NAME OF HOLDER]

PART I—CHARTER SERVICE

[NAME OF HOLDER] is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Public Law 87-528 and Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in the following:

1. Supplemental air transportation with respect to persons and property between any point in any State of the United States or the District of Columbia, on the one hand, and points in Canada and Mexico, on the other hand.

2. The transportation of persons and property on a planeload basis pursuant to contracts with the Department of Defense in overseas and foreign air transportation, and in interstate air transportation to the

(10175, 10176)

extent that such planeload services involve operations between places in the same Territory or possession of the United States, subject to the provisi[illegible] that any such services shall be furnished at the rates and compensation and in accordance with the terms specified in such contracts. The rates and compensation specified in such contracts shall be computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders. For the purpose of this Part, the term "planeload basis" refers to air transportation pursuant to contracts with the Department of Defense where the entire capacity of one or more aircraft has been engaged by the Department.

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PART II—TERMS, CONDITIONS, AND LIMITATIONS

This certificate, and the service authorized herein, is subject to the following terms, conditions, and limitations:

(1) The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Economic Regulations for overseas and foreign supplemental air transportation other than transatlantic supplemental air transportation.

(2) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued

pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board, including but not limited to standards relating to liability insurance, performance bonds, minimum extent of service, and continuing fitness.

This certificate shall be effective on and the authority granted by paragraph 1. of Part I hereof shall terminate five (5) years thereafter: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of (Order E-), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the day of.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on
in Order E-

(10177)

10177

Issued pursuant to
Order No. E-

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

SOUTHERN AIR TRANSPORT, INC.

PART I—CHARTER SERVICE

Southern Air Transport, Inc., is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Public Law 87-528 and Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in the following:

1. Supplemental air transportation with respect to persons and property between any point in any State of the United States or the District of Columbia, on the one hand, and

   (a) American Samoa, Guam, Johnston Island, the Marshall Islands, Okinawa, Wake Island, and a point or points in Australasia, Indonesia, and Asia as far west as longitude 70 degrees east, on the other hand, via a transpacific routing;

(b) a point or points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba, the Leeward and Wayward Islands, or any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand.

2. The transportation of persons and property on a planeload basis pursuant to contracts with the Department of Defense in overseas and foreign air transportation, and in interstate air transportation to the extent that such planeload services involve operations between places in the same Territory or possession of the United States, subject to the provision that any such services shall be furnished at the rates and compensation and in accordance with the terms specified in such contracts. The rates and compensation specified in such contracts shall be computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable

rules, regulations, or orders. For the purpose of this Part, the term "planeload basis" refers to air transportation pursuant to contracts with the Department of Defense where the entire capacity of one or more aircraft has been engaged by the Department.

PART II—TERMS, CONDITIONS, AND LIMITATIONS

This certificate, and the service authorized herein, is subject to the following terms, conditions, and limitations:

(10178)

(1) The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Economic Regulations for overseas and foreign supplemental air transportation other than transatlantic supplemental air transportation.

(2) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board, including but not limited to standards relating to liability insurance, performance bonds, minimum extent of service, and continuing fitness.

This certificate shall be effective on and the authority granted by paragraph 1. of Part I hereof shall terminate five (5) years thereafter: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of (Order E-), insofar as such order

authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

10179

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the day of

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on
in der E-

(10180)

10180

(TIA and World)

Issued pursuant to
Order No. E-

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

[Name of Holder]

PART I—CHARTER SERVICE

[NAME OF HOLDER] is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Public Law 87-528 and Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in the following:

1. Supplemental air transportation with respect to persons and property between any point in any State of the United States or the District of Columbia, on the one hand, and

(a) American Samoa, Guam, Johnston Island, the Marshall Islands, Okinawa, Wake Island, and a point or points in Australasia, Indonesia, and Asia as far west as longitude 70 degrees east, on the other hand, via a transpacific routing;

(b) a point or points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba, the Leeward and Wayward Islands, or any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand;

(c) a point or points in British Honduras, the Canal Zone, Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, Panama, and in the countries on the continent of South America, on the other hand.

2. The air transportation of persons and property on a planeload basis pursuant to contracts with the Department of Defense in overseas and foreign air transportation, and in interstate air transportation to the extent that such planeload services involve operations

between places in the same Territory or possession of the United States, subject to the provision that any such services shall be furnished at the rates and compensation and in accordance with the terms specified in such contracts. The rates and compensation specified in such contracts shall be computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders. For the purpose of this Part, the term "planeload basis" refers to air transportation pursuant to contracts with the Department

(10181)

of Defense where the entire capacity of one or more aircraft has been engaged by the Department.

PART II—TERMS, CONDITIONS, AND LIMITATIONS

This certificate, and the service authorized herein, is subject to the following terms, conditions, and limitations:

(1) The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Economic Regulations for overseas and foreign supplemental air transportation other than transatlantic supplemental air transportation.

(2) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board, including but not limited to standards relating to liability insurance, performance bonds, minimum extent of service, and continuing fitness.

This certificate shall be effective on and the authority granted by paragraph 1. of Part I hereof

shall terminate five (5) years thereafter: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of (Order E-), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

10182

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the day of

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on
in Order E-

10183

Appendix A

THE APPLICANTS*

AAXICO Airlines, Inc.

AAXICO is a frontrunner among the more stable and successful of the existing supplemental air carriers. Mr. Howard J. Korth, who was a co-founder of AAXICO in 1946 and has continuously controlled the corporation, throughout the years has retained experienced managerial and operational personnel, many of whom have ten or more years with the company. Originally a nonscheduled cargo carrier, AAXICO was certificated in 1955 to provide a scheduled air cargo service. When in 1962 its certificate for such service was not renewed, the carrier was awarded interim operating authority as a supplemental air carrier.[1] There is nothing in the history of AAXICO's operations that for present purposes would reflect adversely on its compliance disposition.[2]

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* Numerous references are made throughout to Board orders granting interim operating authority or certificates. Unless otherwise indicated, the reference is only to the initial authorization and subsequent amendments should be consulted to ascertain the exact scope of present authority.

[1] See *North-South Airfreight Renewal Case*, 22 C. A. B. 253 (1955); *Airfreight Certificate Renewal Case*, 23 C. A. B. 186 (1956); and *Domestic Cargo-Mail Service Case*, Orders E-18300, May 3, 1962, and E-18534, June 29, 1962. Interim operating authority was issued by Order E-18873, October 5, 1962.

[2] The carrier was found guilty of economic violations occurring in the 1957-1958 period and one cease and desist order was issued by the Board. See Orders E-16475, March 6, 1961, and E-16690, April 20, 1961. In addition, since 1959 the carrier has been cited

(10183, 10184)

From the inception of its operations in 1947 AAXICO's air transport activities have been concentrated primarily on conducting extensive worldwide military contract operations and on providing a more limited domestic civil cargo service. Between 1952 and mid-1963 the military services alone accounted for $52,000,000 in gross revenues. Since the change of classification in 1962 to that of supplemental air carrier, the military dominance has continued, with the result that in 1962 and 1963 99.0 percent or better of AAXICO's total transport revenues have been derived from this source. To illustrate the point another way, in 1963 the carrier performed no civil passenger charters and only $89,000 of its total transport revenues of $3,643,000 were attributable to civil air cargo movements. AAXICO has consistently engaged in some nontransport activities, primarily the purchase, sale, and lease of aircraft.

10184

The applicant's total aircraft fleet is company-owned and consists of two recently acquired convertible DC-7-C/F aircraft, eight DC-6A's (convertible), and 17 C-46F's. Assuming its continuance as a separate entity and the award of inclusive tour and split charter authority, AAXICO proposes to acquire three DC-6B aircraft and would require some 20 additional employees in sales and traffic. The applicant forecasts revenues from these sources for 1965 of $2,745,358, total operating expenses of $2,497,365, for a net profit of $123,997. There are no definitive plans for the acquisition of jet aircraft.

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for some 12 safety violations which resulted in the issuance of letters of correction or reprimand and civil penalties totaling about $4,800.

(10184)

Over the years AAXICO has maintained a solid financial status by all yardsticks of evaluation, with a strong cash and working capital position and little or no long term debt. Its cash balance on hand or in banks as of December 31, 1963, totaled $4,810,975. Except for a net loss of $150,000 in 1961, in the entire period from 1957 through the second quarter of 1964, AAXICO has experienced a net annual profit ranging normally between $500,000 and $1,000,000. The carrier's only real problem has been the high percentage of military revenues, which are subject to possible substantial reductions if the Department of Defense carries out its "30% commercial" policy.

Like the other applicants, AAXICO desires permanent certification. It also advocates the addition of (1) split charter and inclusive tour authority, (2) the right to charter to airfreight forwarders, and (3) continuation by the Board of regulatory requirements generally of the type applicable to transatlantic passenger charters. The applicant assumes that only the strongest carriers financially will be selected and that the same passenger and cargo authority will be granted to each, without geographical limitations.

On November 10, 1964, AAXICO and Saturn Airways, Inc., another applicant in this proceeding, filed a merger agreement.[3] An Examiner's Initial Decision favoring approval has been issued. Under this agreement Saturn would be the surviving corporation and would be controlled by Howard J. Korth who would hold better than 90 percent of the outstanding stock. According to the parties, their existing operations are complementary and the

[3] Docket 15675.

merger would permit the conduct of a balanced program of passenger and cargo charter operations. It would also permit AAXICO to eliminate its disproportionate reliance on military revenue while providing Saturn with the financial strength it presently lacks. All existing employees would be retained and no additional sales and traffic personnel would be necessary. The merged company forecasts a net profit from the grant of inclusive tour and split charter authority of some $208,675 for 1965. It would be the intention of the merged company to acquire jet aircraft for 1966 operations.

10185

American Flyers Airline Corp.

This applicant is the creation of Reed Pigman, who has a background of some 40 years of aviation experience. Mr. Pigman established an aviation training school at Meacham Field, Ft. Worth, Texas, in 1939, which has since become the largest civilian school in the world specializing in flight training. At the end of World War II, Mr. Pigman's charter operations with DC-3's developed into the present airline, which has evolved progressively through the stages of designation as a large irregular air carrier to its present status as the holder of supplemental air carrier interim operating authority.[4] Mr. Pigman has retained a compe-

[4] Applicant's interim certificate was granted by Order E-18872, October 5, 1962. Separate corporations are now utilized for the activities of the training school (American Flyers, Inc.) and the airline (American Flyers Airline Corp.), both of which are owned and controlled by Mr. Pigman. As stated by one of the applicant's witnesses, in practical effect all profit and loss funnels directly to Mr. Pigman through these entities.

tent staff of experienced managerial, operational, and technical personnel, and throughout its existence the operations of the airline have not presented any significant economic or safety enforcement problems.[5]

The airline's administrative offices are located at Meacham Field, and at Ardmore, Okla., it maintains extensive facilities, including hangar space, for maintenance, overhaul, and fuel storage. Its fleet consists of aircraft with seating capacity of from 28 to 105 passengers—two L/149's, two L/049's, four L/1049's, and two Electras. All of the foregoing are owned by the company and, in addition, it operates four DC-3 aircraft leased from Mr. Pigman. The applicant is interested in obtaining convertible pure jet aircraft but has not developed concrete plans to acquire them.

American Flyers traditionally has been a passenger charter airline concentrating in the domestic field, with only occasional participation in the business of transporting individually ticketed passengers before that source of revenue became unavailable to the supplementals. More recently, however, about two-thirds of the carrier's transport revenues for interstate air transportation services have been derived from military CAM flights, as indicated below:

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[5] There is no record of economic violations by the applicant. On the safety side, since 1957 several letters of correction or letters of reprimand have been issued and some $5,300 in civil penalties assessed. The applicant presented for the record its own explanation for these occurrences, none of which involved suspension of its operating authority.

10186

	Passengers		Revenue	
	Civil	Military	Civil	Military
1961	5,594	21,118	$257,896	$ 935,670
1962	9,239	28,414	338,371	1,363,889
1963	16,578	41,307	644,991	1,652,575

Operations in overseas and foreign air transportation, while not extensive, have been more sizeable than most.[6] Recently the carrier was granted interim certificate authority to operate transatlantic civil passenger charters during the 1965 summer season.[7]

In 1963 the applicant substantially accelerated its program for civil passenger charters, with the ultimate goal of obtaining at least 50 percent of its transport revenues from the civilian market. Company personnel and aircraft seat-mile capacity were almost doubled in 1964 over 1963, and several new sales offices have been opened.[8] The geographic scope of civil operations has also broadened, as charter flights have been operated or scheduled in 1964-1965 for such destinations as Hawaii, Mexico, Jamaica, the Bahamas, Puerto Rico, and Canada. Actual mid-year 1964 operating results show some $550,000 in civil passenger revenues, and the applicant estimates that such revenues for the full year will reach $1,864,000, more than double the comparable revenue figure for 1963.

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[6] Passenger flights to and from Canada produced revenues of $8,848 in 1961, $15,944 in 1962, and $43,695 in 1963.

[7] Order E-22260, June 2, 1965.

[8] In addition to its principal offices at Ardmore and Fort Worth, American Flyers has sales representation in Washington, D. C., New York City, Chicago, Houston, Los Angeles, San Francisco, and Toronto, Canada. Additional sales personnel are contemplated for San Diego, New Orleans, and Atlanta.

(10186, 10187)

Although the applicant has operated successfully since its inception, its profit picture has been spotty and the carrier has had chronic difficulty with working capital. As shown in Appendix C, operating results fluctuated from a loss of $275,000 in 1963 to an operating profit of $207,000 in 1964. While the carrier has maintained positive net worth for the past three years, its net working capital position deteriorated from a positive figure of $220,000 in 1962 to negative amounts of $784,000 and $830,000 in 1963 and 1964, respectively.

10187

The working capital problem is alleviated to some extent by favorable banking arrangements with the Continental National Bank of Fort Worth. The bank in effect provides the applicant's working capital by permitting it to borrow freely and continuously against U. S. government transportation requests up to a bank loan limit, now set at $800,000. In addition, there has been extensive forgiveness of debt for DC-3 rentals owed by the airline to Mr. Pigman, which totaled $862,000 in the 1955-1963 period.[9]

American Flyers also desires the broadest possible authority and estimates that, as a matter of judgment, passengers and revenue would increase by 30 percent with inclusive tour authority; an additional 10 percent for separate charters; 40 percent with both inclusive tour and split charter authority; and 50 percent if the applicant could conduct pro rata charters with no affinity requirements. Assuming the grant of this authority and the acquisition

[9] At the hearing the applicant asserted that it has some $1½ million in Constellation spare parts acquired in 1962 which are not reflected on its balance sheets.

of two pure jet aircraft, and making allowance for related expenses for additional administrative maintenance, operations, flight, and sales personnel, the applicant asserts that in the first full year of operations it would obtain $15,000,000 from its charter traffic, 75 percent of which would be from the civil charters, at a profit of $500,000.

Capitol Airways, Inc.

From its beginning as a fixed-base operator in 1946, this applicant has steadily grown to its present status as one of the largest of the supplemental air carriers, with two sizeable maintenance and overhaul bases—at the Greater Wilmington Airport, New Castle, Delaware, and Berryfield, Nashville, Tennessee. Capitol is owned and controlled by Jesse F. Stallings, its principal organizer and president, who has retained a staff of competent and experienced managerial and operational personnel. Capitol is now the holder of a certificate authorizing it to provide civil passenger charters across the Atlantic, as well as an interim certificate for its other operations as a supplemental air carrier.[10]

10188

Capitol maintains a large fleet of some 40 transport type aircraft which includes, as owned aircraft, 11 Constellations of various models, four Argosy's, one DC-3, and 15 C-46's. In addition, six L-1049's and two C-46's are leased. The ap-

[10] *Transatlantic Charter Investigation*, Docket 11908 *et al.*, Order E-20530, served March 3, 1964. Its interim certificate was granted by Order E-18871, October 5, 1962. The fixed-base and aircraft sales activities are now performed by a separate corporation, Capitol Air Sales, Inc., which is also substantially owned and controlled by Mr. Stallings.

plicant also owns one DC-8F pure jet, placed in operation in October, 1963; a second DC-8F has been ordered for December 1965, and Capitol plans to order a third for delivery in April 1966.

The applicant's operations have been virtually worldwide in scope and have produced total transport revenues ranging between $13 million and slightly under $19 million annually in the calendar years 1961, 1962, and 1963. While its interstate charter activities have been extensive, 74.6 percent to 82.2 percent of its total transport revenues in the 1961-1963 period were derived from the military for whom it has performed a great diversity of services, including domestic CAM's, those of a LOGAIR contractor, and international MATS operations. For the year ended September 30, 1964, 31.8 percent of Capitol's total transport revenues of $16,772,000 were derived from civilian sources and it had an operating profit of $924,000.

Although not certificated until 1964, the applicant has been a major participant in the transatlantic passenger charter market since 1958 pursuant to Board authorization, and this market provides the bulk of Capitol's non-military revenues. Last summer Capitol experienced an increase of 127 percent in its summer transatlantic traffic over the previous year and expects a similar increase in 1965. Approximately 60 percent of the total volume of the transatlantic revenues was received from the operations with its pure jet and a remainder from use of its other aircraft, and the carrier is experiencing an increasing sales resistance to propeller driven equipment. Capitol's split charter authority has been of a limited usefulness since such charters may not be operated to such IATA countries as the United Kingdom and France.

Although the applicant's financial position has been found to be relatively sound on the recent occasions that the Board has had to consider the matter,[11] there are areas of financial concern. Capitol's problems have been in undercapitalization ($10,000 in capital stock outstanding), together with its cash and working capital position. As shown by Appendix C, while its net worth position has been relatively strong, the problem with working capital has been substantial and sustained, and profits have been modest in comparison with total operating revenues. Thus, in 1964 net worth was $952,000, only slightly less than the figure for 1961; operating profits declined from $378,000 in 1961 to $164,000 in 1963, and then turned upward to $924,000 in the subsequent year. Working capital, however, experienced a precipitous decline from negative figures of $60,000 in 1961 to $3,756,000 in 1964.

10189

Capitol presented a general estimate concerning the impact on its revenues under various assumptions as to the scope of authority that might be granted in this proceeding. Assuming that two DC-8F aircraft had been operated in 1963, Capitol forecasts that its 1963 transport revenues of over $15 million would have been increased by 5 percent with split charter authority; inclusive tour authority would add another $5 million; and with both types of authority its revenues would have totaled $20,651,000.[12]

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[11] Order E-20530, pages 24-25.

[12] A cease and desist order for violations of an economic nature was entered previously against the carrier. The Board has found, however, that the activities that gave rise to this order should not

(10189)

Conner Air Lines, Inc.

Francis Augustus Conner received a Letter of Registration as a Large Irregular Air Carrier in 1949, and from that year until February 8, 1959, when the last revenue flight was flown, he conducted operations intermittently—originally as a sole proprietorship and later through Conner Air Lines, Inc., a Florida corporation controlled by him. All of Conner's authorizations from the Board were terminated in July 1962 by P. L. 87-528, and neither Mr. Conner nor any of his enterprises now possess any authority to engage in air transportation.[13] Present activities are limited to the purchase, sale, and rental of aircraft and associated equipment.

The applicant here is Conner Air Lines, Inc., a newly organized Delaware corporation, which at present is a corporate shell. Aside from the $1,000 received from Mr. Conner to purchase all of its outstanding capital stock, the ap-

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have any material adverse effect on Capitol's compliance disposition. Order E-18871, page 5. From 1959 to date various letters of reprimand and letters of correction have been issued to the applicant by the FAA and over $17,000 in civil penalties have been assessed. Presently in dispute are asserted violations of record-keeping requirements allegedly stemming from Capitol's C-46 operations. An initial compromise offered of $5,000 by the FAA was refused, the matter is now in litigation, and the dollar amount presently claimed by way of penalties has escalated to $343,000. According to press reports this $343,000 claim has been settled for $6,500. *Aviation Daily*, Vol. 159, No. 31, June 15, 1965, p. 263.

[13] See Order E-21740, February 1, 1965. Mr. Conner apparently attempted to reactivate operations with C-46's in 1962 but approval of the company's proposed manual was denied by the FAA in May of that year. Conner's inactivity disqualified the carrier from receiving interim operating authority and his request therefore was denied. Orders E-19045, November 28, 1962, and E-20681, April 10, 1964.

plicant has no assets, no full-time employees, and no aircraft. The apparent purpose of utilizing the Delaware corporation is to permit Mr. Conner to preserve a tax loss from the past corporate activities and to allow for easier financing if authority is granted. The Florida corporation

10190

has an accumulated deficit which grew from $166,426 at the end of 1960 to $369,232 as of June 30, 1964, and which consists of amounts owed to Mr. Conner personally.

As far as is shown by the record, applicant would be dependent entirely upon Mr. Conner for the funds necessary to inaugurate operations. He in turn has expressed willingness to guarantee that an amount up to $500,000 would be made available if a permanent certificate is granted. In support of his undertaking, Mr. Conner presented an unverified statement of net worth for himself and his wife as of December 10, 1964, which showed total assets of $856,553.12, total liabilities of $50,939.51, and a net worth of $805,613.61. To a substantial extent the assets consist of used aircraft, many of which are not in operating condition, and a warehouse containing a supply of engines, parts, and related equipment. For the most part, the valuations were not independently arrived at but established by Mr. Conner himself.

Applicant presented several proposals which were predicated on types of operations beyond the scope of this proceeding. Insofar as its charter proposal is concerned, applicant proposes to lease two DC-7B's and L-1049's for passenger service and one DC-4 and one C-46 for cargo operations. For 1965 as a future year, it estimates revenues of $1,822,824 and expenses of $1,446,493.

(10190, 10191)

Holiday Airways, Inc.

The applicant is a newly formed corporation which conducts no air transport operations. The principals are Richard D. Neumann, its president, who owns 700 of the 1,000 shares of stock outstanding, and Joseph H. North, the executive vice president, treasurer and secretary. Messrs. Neumann and North and most of the applicant's other officers have had some aviation experience, particularly with supplemental air carriers or their predecessors.[14]

Holiday did not present a balance sheet or other formal indicia of its present financial condition. However, from the oral testimony it is evident that, as of the date of hearing, the applicant has some $5,000 in cash on hand. Since incorporation in February 1964 some $33,000 has been expended, $13,000 of which was supplied by unsecured two-year notes from individuals and $20,000 by loans from Messrs. Neumann and North. The applicant occupies some

leased space at Midway Airport in Chicago, which would be its main base, but has no other facilities. It presently owns no aircraft and has no salaried employees.

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[14] Mr. Neumann was president of California Air Charter, Inc., a former supplemental air carrier, when its interim authorization was revoked for knowing and willful violations of the Act, but he was not affiliated with the company when those violations occurred. *California Air Charter-Mercer, Enforcement*, 30 C. A. B. 17 (1959). Mr. North was a pilot for Chicago and Southern before its merger with Delta Air Lines. Since that time he has had financial, accounting, and general business experience unconnected with aviation. Although other officers were employed by various supplemental air carriers found guilty of economic violations of the Act, their employment was not as officers, directors, or in other capacities involving managerial and policymaking responsibilities.

Holiday plans to inaugurate operations promptly as the first step in a three-stage program. The initial operations for the first year would consist of a cargo service for five shippers under long-term contracts between Hawaii, on the one hand, and the Pacific Coast, Northern Europe, and Japan, on the other hand. Applicant would utilize three L-1649AF's, to be purchased from TWA, and would lease additional ground facilities at Lockheed Air Terminal, Burbank, California, at the Oakland International Airport, and at Honolulu. These plans, as well as the full-time employment of Holiday's officers and the commencement of their compensation, are all contingent upon formal execution of the contracts with the shippers, which has not yet been accomplished.[15]

In the applicant's view, these initial operations would constitute private carriage for hire and therefore would not be subject to the Board's economic regulatory jurisdiction. Certification as a supplemental carrier is desired in order to permit expansion in the number of contracts to a full common carriage operation and to provide the additional financial support that could be derived from passenger charters. Holiday has not yet obtained an appropriate operating certificate from the FAA, which would be required for even the "contract" operation.

Holiday's financial plans are also contingent upon formal execution of the contracts, and later, upon issuance of a certificate as the result of this proceeding. As of the beginning

[15] Holiday's intention was to start the "contract" operation on or about March 1 of this year, and at its request the record was held open until February 8, 1965, for the receipt of copies of executed contracts with its proposed shippers. However, no such contracts were submitted for the record.

of operations, and again assuming the existence of signed contracts, applicant states that it would have $509,000 in current assets all represented by cash on hand or in banks, and $460,000 in fixed assets. The $509,000 figure is constructed by adding the $1,000 already paid in for stock, $200,000 to be received in prepaid transportation revenues, $600,000 in debt capital, $150,000 in equity capital, and an additional $18,000 in loans from officers, from which is to be subtracted $460,000 representing the cost for flight and other equipment. Holiday has written stock subscriptions for some $135,000 to be made available when the applicant is ready to inaugurate operations pursuant to the contracts and for an additional $75,000 to $85,000 if and when a certificate is issued. The $600,000 in debt capital, also contingent on the signed contracts, is in the process of nego-

tiation but no commitment has been made as yet. Should all of these things come to pass, the applicant foresees at the end of the first year total revenues of $3,554,000, total expenses of $2,963,338, and a net profit after taxes of $216,197.

In the second year of operation Holiday would for the first time use its certificate authority to supplement its basic "contract" service. According to the applicant, the availability of this additional authority would enable it to increase its total revenues almost fivefold and produce a net profit of $2,362,753. This assumes additions to its aircraft fleet by purchase of three more L-1649AF's (for a total of six such aircraft), three DC-3's, two Martin 202's, and three DC-7BF's; and some additional equipment, such as DC-4's might be leased-purchased. With no additional

aircraft in the third year of operation, the applicant asserts that it could increase its revenues to over $18 million and its net profit to $2.7 million.

Holiday generally supports expansion of supplemental air carrier authority to include split charters and inclusive tours. In the provision of supplemental air transportation, the applicant asserts that at least initially it would concentrate on providing service to and from the 12-state area surrounding Illinois.

Johnson Flying Service, Inc.

Johnson Flying Service was founded by Robert R. Johnson, the owner of 76 percent of its outstanding stock, who has been engaged in aviation activities continuously since 1924 and has been the president and manager of the applicant since its inception. The company has a sizeable maintenance and overhaul facility at Missoula, Montana, its principal base of operations, and also maintains a smaller facility at McCall, Idaho. There is a high degree of longevity of service among Johnson's employees, and its management is skilled and experienced. The applicant has held the various types of Board authorizations previously issued to supplemental air carriers and their predecessors, and it presently holds an interim certificate authorizing it to engage in supplemental air transportation.[16]

Unlike virtually all of the other operating supplemental air carriers, Johnson conducts no operations for the military. Rather, it is a specialist in mountain flying whose operations are geared particularly to the states of the Northwest surrounding Missoula. Johnson's services under

[16] Order E-18874, October 5, 1962.

contract with U. S. Forest Service generally have provided the major source of its income.[17] These services demand a

high degree of skill since they involve such activities as timber spraying, transporting smokejumpers and associated activities in conjunction with the forest firefighting program, cargo drops, para-rescue flights, etc.

The applicant also conducts conventional planeload charter operations in which there has been a substantial amount of repeat business by customers of long standing.[18] The passengers carried and revenues derived from these charter operations in the 1961-1963 period are indicated below:

	Pax.	Rev.
1961	1355	$35,188
1962	2087	60,930
1963	5220	60,678

Revenues from cargo charters other than for the U. S. Forest Service increased from about $7,600 in 1961 to $16,653 in 1963. All of Johnson's operations have been in interstate air transportation (including Alaska), with an

[17] The precise dollar amount of this revenue has fluctuated over the years but has always been substantial. In 1963, for example, it accounted for $741,771 of Johnson's total transport revenues of some $902,000.

[18] These charterers, until recently at least, have been exclusively of the single entity variety, and Johnson has some charters already booked for performance as far in the future as 1967. Applicant's principal customers include Montana State University at Missoula; Montana State College at Bozeman, Montana; Idaho State University at Moscow, Idaho; and the Atomic Energy Commission at Idaho Falls, Idaho.

occasional flight transiting Canada. Throughout the years, applicant's record of compliance with regulatory requirements has been excellent.[19]

Applicant's fleet is composed of some 40 airplanes and six helicopters, all owned by the company. One DC-4 and two DC-3's are used in Johnson's charter operations and the bulk of the remaining airplanes are small aircraft. Included are some 16 different types of aircraft and 12 kinds of engines which are overhauled and maintained at the applicant's base in Missoula.

Johnson, despite the modest size of its operations, belongs among the more satisfactory grouping of supplementals from a financial standpoint. It has remained consistently strong, with much of its earnings plowed back into the company for the acquisition of additional aircraft. As

10194

shown in Appendix C, despite some fluctuation in its operating profit position, Johnson has maintained a net worth in the range of $450,000 to $500,000, and net working capital of at least about $150,000, in the entire 1961-1964 period.

Any expansion of the applicant's authority would require additional aircraft and personnel of unspecified types and amounts. The applicant believes that if it had authority to provide inclusive tours and split charters, its 1963 revenue (other than from the Forest Service) would have increased by about one-third.

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[19] The applicant has not been the subject of an economic enforcement proceeding since 1947. From 1959 to the present there has been only one instance of an alleged safety violation and this was disposed of by issuance of a letter of reprimand.

(10194)

Modern Air Transport, Inc.

Modern has been active in the nonscheduled or supplemental field since 1947 and is one of the smaller and more conservative of the supplemental air carriers now operating under an interim authorization.[20] Since 1953 the applicant has been owned and controlled entirely by John P. Becker, its president and general manager, who has been associated with aviation activities for over 25 years, and who has retained for the company managerial employees experienced in airline operations. Its base is at Trenton, New Jersey, where, except for engines and other selected items, Modern performs its own maintenance and overhaul. The carrier also engages in some limited activities of a fixed-base nature, such as the sale of aviation fuel and the performance of maintenance for itinerant aircraft.[21]

During recent years the applicant has been engaged almost exclusively in interstate operations, with heavy dependence upon domestic military movements. In 1961, before the demise of individually ticketed and waybilled operations by the supplementals, this source provided the major portion of its income. Starting in 1962, however, and continuing through the year ended September 30, 1964, the military CAM's or CAMF's accounted for better than 90 percent of Modern's revenue. Civil charters consistently

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[20] Modern's interim certificate was granted by Order E-18870, October 5, 1962.

[21] Applicant's compliance history shows one cease and desist order outstanding concerning section 408 violations related to Mr. Becker's interlocking relationships. Further, there were four instances of alleged safety violations in 1963 and 1964, which were disposed of on the basis of a civil penalty of $250 and letters of reprimand or correction.

have played a relatively minor role, as shown by the table below:

	1961	1962	1963
Revenue CAMs	$ 22,008.80	$ 899,344.50	$746,013.09
Common Carriage	253,511.84	40,836.50	9,584.20
Excess Baggage	502.48	46.20	15.00
Civil Charters	69,414.70	39,766.87	44,535.56
CAs	7,487.20	14,104.20	——
Incidental revenue	6,305.00	11,392.79	——
TOTAL[22]	$359,230.02	$1,005,491.06	$800,147.85

As of June 30, 1964, the applicant's transport aircraft consisted of one L-749 and two L-049's. However, as of the date of hearing, the Constellations had been sold, and the carrier has recently acquired three DC-7C's. It has also received interim certificate authority to operate transatlantic passenger charters during the 1965 season.[23]

Modern's financial condition has been very marginal, and the Board was presented with a close question as to the carrier's financial fitness even at the time its interim certificate was issued in 1962.[24] As shown by Appendix C, Modern has had a negative net worth for the past two years and is the only operating supplemental currently in that situation. While the carrier's income has risen steadily, it has been more than offset by the increase in expenses. Modern had operating losses of $71,000 and $67,000 in 1963

[22] The total figures for 1961 and 1962 comprise total operating revenue, while the total for 1963 comprises total transport revenue.

[23] Order E-22357, June 24, 1965.

[24] Order E-18870, page 3.

and 1964, respectively, and has experienced a negative net working capital position for the past four years—$197,000 in 1961, $22,000 in 1962, $74,000 in 1963, and $99,000 in 1964.

According to the carrier, its financial difficulties in 1963 and 1964 were attributable largely to faulty engine overhaul by a contractor, which involved substantial extra costs. A saving grace for the carrier has been the fact that most of its needed funds have been provided by Mr. Becker on unusually favorable terms. Also, since much of the long term debt is owed to Mr. Becker, it would be subject to forgiveness if that course were deemed necessary.

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Modern's plans call for the eventual acquisition or lease of three turbo-prop Electras and retention of as many of the DC-7C's as its needs may dictate. Assuming operation of the turbo-props, the carrier's judgment is that it would have had approximately 50 percent more revenues in 1963 with split charter (35 percent) and inclusive tour (15 percent) authority. On the basis indicated, Modern estimates $5,350,000 in revenues and $4,800,000 of expenses, for a net income of $550,000.

Overseas National Airways, Inc.

ONA is the holder of an interim certificate and, in addition, was selected by the Board in the *Transatlantic Charter Investigation*, Docket 11908 *et al.*, as one of three carriers to receive certificate authority to provide civil passenger charters across the Atlantic. However, in view of ONA's filing of a petition in bankruptcy and its suspension of operations after the adoption of the Board's decision in the *Charter Investigation*, the President returned the decision

to the Board for further evaluation insofar as the award to ONA was concerned. The proceeding was reopened and further hearings held. On October 8, 1964, Examiner Wiser issued a recommended decision finding that ONA should not be certificated since it was no longer financially fit to conduct transatlantic charter operations.[25] The Board has since reopened the record in the *Charter Investigation* in order to receive up-to-date information on the current fitness and comparative qualifications of all supplemental air carrier applicants in that proceeding (including ONA) for selection as transatlantic passenger charter carriers.[26]

ONA was organized in 1950 and during the early years of its operations was one of the dominant carriers in the supplemental air carrier field, particularly in the 1956-1960 period. In 1960, for example, ONA had some $28,000,000 of transport revenues, virtually all from military traffic, which represented about 46 percent of the total of such revenues for all supplemental carriers combined during that year.

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Subsequently, however, ONA's situation steadily worsened as the carrier experienced persistent losses.[27] The car-

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[25] *Charter Investigation*, Orders E-20530 and 20531, served March 3, 1964; E-20776, April 30, 1964; and E-21567, December 8, 1964. The certificates issued to the other two transatlantic charter carriers selected, Capitol and Saturn, were unaffected by the President's action and are currently in effect. ONA's interim certificate was issued by Order E-18867, October 5, 1962.

[26] Order E-21966, March 30, 1965.

[27] Data filed in connection with the bankruptcy action showed net losses in the following amounts in fiscal years 1961 through 1963, respectively: $218,490, $173,984, and $278,642 ($211,532 in July-October 1963). According to the carrier's reports filed with the Board the net loss was $982,000 in calendar year 1963.

rier's last revenue flight was performed on October 4, 1963, and on October 28 of the same year the petition in bankruptcy was filed under Chapter XI of the Bankruptcy Act. As of the date of this petition, ONA showed total assets of $747,342 and total liabilities of $2,088,535.

As the debtor in possession, ONA has authority to conduct operations during the pendency of the bankruptcy action but has not undertaken to do so. The applicant now has only two full-time salaried employees; it owns no aircraft and has none under lease. Apart from relatively small amounts in cash and accounts receivable, its principal assets consist of spare parts inventory at John F. Kennedy International Airport in New York, where it has office and warehouse space, and at Oakland, California. Although ONA entered into a plan of arrangement with its principal creditors on April 14, 1964, the plan has not yet been presented to the Court for confirmation and probably will not be presented until the Board has acted finally on ONA's certificate application in the *Charter Investigation*. According to the carrier's witnesses, confirmation of such a plan is routine and usually accomplished within 45 to 60 days after a request is made.

Under these circumstances, it was necessary for the applicant to present its case here on two alternative assumptions: first, that it will not receive a transatlantic charter certificate, and second, that such a certificate ultimately will be issued to it. Under the first assumption ONA would be effectively owned and controlled by Bernard J. Herkimer. The carrier would hope to lease two DC-7-C/F's and engage in inclusive tour and split charters, as well as the conventional planeload charters. At the time the plan of arrangement was approved, some $300,000 to

$350,000 in additional financing would be necessary to pay priority claims and otherwise permit inauguration of operations. No source for such funds is apparent from the record.

Should ONA be certificated to provide transatlantic civil passenger charters Messrs. G. F. Steedman Hinckley and Louis Marx, Jr., would become co-owners in equal shares of ONA stock and each is committed by outstanding escrow

10198

agreements to furnish $375,000 to the company.[28] Mr. Herkimer, who would receive some $50,000 over a period of time pursuant to an agreement with Mr. Hinckley, would no longer have any interest in the carrier. Upon judicial approval of the plan of arrangement, presumably ONA would reactivate operations with leased DC-7-CF's on the basis previously indicated.[29]

The applicant presented two different balance sheets as of November 30, 1964, also predicated on alternative assumptions. Based on the present circumstances they show total assets of $480,657, current and long term liabilities of $1,254,729 and a negative surplus at January 1, 1964, of $1,060,613. If, however, effect is given to the

[28] The documents in the record show that each would acquire 50 percent stock interest. However, Mr. Hinckley testified that a relatively small amount of the stock might be vested in Mr. J. William Bailey, then Executive Vice President of the National Air Carriers Association who, in effect, would act as a swingman between the equal interests of the other owners.

[29] The traffic and profit and loss estimates presented by ONA are predicated on its exhibits in the *Charter Investigation*, which contemplate interstate and transatlantic charter operations only. Adjusted to reflect, among other things, the addition of inclusive tour and split charter authority ONA forecasts net revenue of $283,755 for 1965.

proposed creditor's plan of arrangement, the balance sheet shows current assets of $169,082 and current liabilities of $136,710. In addition, there are additional liabilities of $99,870 due within 13 to 30 months and a negative item for unappropriated retained earnings of $885,744.

ONA's past operating record does not reflect adversely on its compliance disposition. The Board did enter a cease and desist order against the carrier with respect to unauthorized operations in 1958 and 1959, which was sustained upon judicial review.[30] There were four instances of alleged safety violations in 1960 and 1961 which were compromised on the basis of civil penalties totaling $2,300.

Purdue Aeronautics Corp.

Applicant is a nonprofit corporation affiliated with Purdue University whose mission is aeronautical education and research. Its primary curriculum involves programs concerned with aviation maintenance, aviation electronics, and the training of aviation technicians and professional pilots.

10199

As a supplement to its educational activities, since 1953 Purdue has held authority of one form or another from the Board authorizing nonscheduled or irregular operations with large aircraft, and it currently holds interim authority pursuant to Public Law 87-528.[31] Its management and operations employees are well qualified and experienced. Purdue's operating base is located at Purdue Air-

[30] *Overseas National Airways, Inc.* v. *C. A. B.*, 307 F. 2d 634 (1962).

[31] Order E-18876, October 5, 1962.

port, Lafayette, Indiana, where the applicant performs its own maintenance and overhaul.

Historically, Purdue's operations have been restricted to providing interstate air transportation services, predominantly single entity passenger charters, with some transborder operations into Canada pursuant to individual authorizations from the Board. Although commercial business has been and remains the mainstay of Purdue's air transport activities, starting in 1962 the applicant has undertaken increased participation in military CAM movements. In 1963 Purdue's charter income was derived 80 percent from commercial passengers ($438,697), 4 percent from commercial cargo ($16,889) and 16 percent from CAM flights ($83,690). The applicant has one DC-6, which was recently acquired. It also operates four DC-3's, one of which is convertible to cargo configuration (C-47). Applicant's record of compliance with applicable economic and safety regulations has been excellent.[32]

Being a nonprofit corporation, Purdue usually records little or no profit or loss. However, its financial condition is relatively sound. Its revenue has grown steadily from $381,000 in 1956 to over $1,000,000 in 1963, while, for the same period, its long term debt has been progressively reduced despite a gradual increase in the value of its total assets. The applicant's ratio of current assets to current liabilities has been generally favorable, and at the end of 1963 its current assets exceeded current liabilities by some $76,000.

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[32] There were four instances of alleged safety violations in 1961 and 1962, which were settled by issuance of letters of reprimand or acceptance of civil penalties totaling $300. No economic violations are indicated.

(10199, 10200)

The applicant desires continued permission to serve on a permanent basis the geographical areas in which it has historically operated—interstate and to and from Canada. It supports inclusive tour authority for supplemental carriers but has no interest in performing split charters. Purdue's future year forecast generally reflects its 1963 experience with additional revenues of $235,880 from the operation of its DC-6, almost one-half of which would be derived from CAM traffic.

10200

Saturn Airways, Inc.

The applicant originated as All American Airways, Inc., a large irregular carrier, in 1948 and assumed its present name in 1960. Saturn is the holder of an interim certificate as a supplemental air carrier and one of two such carriers which possesses certificate authority to provide transatlantic civil passenger charters.[33] Robert G. Goodman, who has an extensive background in aviation matters, has been president of the applicant since 1953 and its controlling stockholder since 1959. As its operating record demonstrates, Saturn's management is well qualified and experienced.

At the present time Saturn operates eight DC-7C's in passenger configuration, two of which are owned and the balance leased. Overhaul and maintenance is performed

[33] Saturn's interim certificate was granted by Order E-18868, October 5, 1962, and its transatlantic passenger charter authority in the *Transatlantic Charter Investigation*, Orders E-20530 and E-20531, served March 3, 1964. An application by the carrier to amend its interim certificate so as to provide it with authority to conduct passenger charters across the Pacific and to Latin America and the Caribbean was denied by Order E-21748, February 2, 1965.

mainly by All American Maintenance, Inc., in San Antonio, where most of Saturn's crews are also quartered. Executive offices are located in Miami, Florida, operational bases in Los Angeles, New York City, and Berlin, Germany, and sales offices in New York City, Chicago, Los Angeles, Miami, London, England, and Berlin. Over the years there has been no significant blemish on the safety of the carrier's operations.[34]

Between 1953 and 1960 the applicant was predominately a domestic military charter operator. Starting in 1960, however, its civil operations became more diversified and have grown substantially to the point where Saturn today is perhaps the most versatile civil charter operator. Notwithstanding this expansion, Saturn's business shows strong seasonality, dropping off sharply in the winter months particularly in transatlantic passenger charters (inaugurated in 1961) and in CAM movements. The diversified nature of recent operations is indicated in the table below for 1963:

Charters	Revenue	Percent
Domestic Civil	$ 258,395	11.1
Domestic Military (CAM)	1,157,960	50.1
Transatlantic Charters	758,727	32.8
Hawaii-Pacific	87,357	3.8
Caribbean and Bermuda	49,719	2.2
	$2,312,158	100.0%

10201

Saturn's estimate on the record, based on charters flown and contracts signed, was that its transport revenue would

[34] In the 1961-1963 period there were three instances of relatively minor infractions of safety regulations which were settled on the basis of letters of reprimand or correction.

(10201)

more than double to $5,045,471 in 1964.[35] The principal items of increase in revenues under this forecast would be domestic civil charters to $677,571, domestic military to $1,489,804, transatlantic charters to $1,650,000, Hawaii-Pacific to $539,000, and Caribbean and Bermuda to $168,096. In addition, Saturn conducted intra-Europe inclusive tours with two DC-7C's based at West Berlin which accounted for $700,000 in revenues during seven months of 1964.

Saturn experienced a marked increase in activity when certificated to perform transatlantic civil passenger charters in 1964, and the data of record is not sufficiently current to allow for a definitive judgment concerning the operating results. However, based on the past Saturn's financial condition must be classed as no better than marginal. It has shown a modest increase in net worth but operating losses and a chronic negative net working capital position.[36] Thus net worth increased from a negative $35,000 in 1961 to a positive $263,000 in 1964 while operating profits of $26,000 annually in 1961 and 1962 were transformed to operating losses of $15,000 and $51,000 for 1963 and 1964, respectively.[37]

The applicant generally supports an award of both split charter and inclusive tour authority to the supplemental air carriers. Given the right to charter aircraft to ticket

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[35] As shown by Appendix C, they did reach a total of $4,696,000 for the year ended September 30, 1964.

[36] Appendix C.

[37] Recently the Board approved an arrangement under which, AAXICO would acquire three of Saturn's leased DC-7C's and lease them back to Saturn under favorable terms and conditions. This arrangement should have the effect of alleviating Saturn's financial problems by deferring payment of substantial current indebtedness. Order E-21992, April 5, 1965.

agents for the operation of inclusive tours, Saturn would concentrate, at least initially, on what it considers to be the major resort markets, viz., Miami, Las Vegas, Los Angeles, Berlin, Mexico City, Hawaii, Puerto Rico, and South America (Rio de Janeiro, Lima, and Buenos Aires). It recognizes the need for jets to compete effectively, particularly in the long haul markets such as the transatlantic, and is negotiating for the purchase of such aircraft.

10202

The applicant presented its plans and proposals on the basis of two alternatives: first, that the company would remain a separate entity as at present; and secondly, that the Board will approve the pending merger agreement between AAXICO and Saturn in Docket 15675.[38] Under the first hypothesis and assuming that it had a five-year permanent certificate in 1963, Saturn estimates that its civil charter revenues would have increased in that year by 7 percent with split charter authority, 39 percent if it could operate inclusive tours, or 46 percent for both. With 1965 as a forecast year, the applicant projects $6,250,000 in revenues, $5,831,000 in expenses, for a net income before taxes of $419,000.

On the second alternative of a merged Saturn-AAXICO during 1965, the estimate is that transport revenues would total $17,637,777, of which $9,190,000 would be revenue from military operations attributable to AAXICO's LOGAIR and Saturn's CAM contracts. The balance would be derived from $3.5 million for transatlantic charters (not including inclusive tours), $700,000 from the Berlin, intra-Europe inclusive tour operation, $1,500,000 in civil cargo charters,

[38] See the discussion of AAXICO, *supra*, pages 1-2.

(10202, 10203)

and $2,745,358 from civil passenger charters other than transatlantic. As far as is shown by this record, the merger would provide a substantial cure for Saturn's past financial difficulties.

Southern Air Transport, Inc.

The applicant was organized in 1947 by Frederick C. Moor, its present Chairman of the Board and Treasurer, and has provided uninterrupted service pursuant to various Board authorizations since 1949.[39] Stanley G. Williams took over active direction of the carrier in July 1962 and continues to serve as its president. Maintenance is performed by the applicant at its home base at the International Airport, Miami, Florida, except for engine overhaul and limited contractual arrangements which are necessitated by Southern's operations for the military in the Far East. Southern has a stable force of experienced management and operations personnel, and the carrier's operations have never posed a compliance problem.[40]

10203

Historically, Southern's civil operations have consisted principally of the transportation of cargo, particularly between Miami and points in the Caribbean and Latin America. Most of this service was provided on an individually waybilled basis, for which the carrier's authority has been

[39] The carrier's interim certificate pursuant to Public Law 87-528 was issued by Order E-18839, September 28, 1962.

[40] No formal economic enforcement action has been instituted against the carrier during its entire history. Between October 1960 and May 1964 there were three instances of alleged violations of safety regulations which were settled by civil penalties totaling $2,250.

terminated by Public Law 87-528. Since 1960 international operations for MATS have provided the major source of the applicant's revenues. Southern's operations pursuant to its MATS contract are centered in the Far East and involve principally the transportation of persons and property between Korea, Japan, Okinawa, Taiwan, the Philippines, Viet Nam, and Thailand. The dominance of the military revenues is illustrated by the tabulation below:

	Transport Revenues (000)			
	Total	% Civil	% Military	% Other
1961	$3,641	10.5	83.4	6.1
1962	5,526	5.9	87.3	6.8
1963	5,814	9.2	87.6	3.1
1964*	5,509	18.9	77.7	3.0

The applicant has an owned aircraft fleet of two DC-6A/B's, one DC-4 in all-cargo configuration, three C-46F's, and one C-45H. In addition, it leases two DC-6 aircraft. Generally speaking, the C-46's and DC-4 have been utilized for the cargo service to the Caribbean while the DC-6's perform the MATS contract operations. Southern has no present plans for the acquisition of jet aircraft.

As illustrated by the data in Appendix C, Southern's financial condition has been consistently sound, with steady growth in profits and net worth, and with a favorable current ratio. Operating profits hovered between $200,000 and $300,000 annually throughout the 1961-1964 period and net worth rose from $128,000 in 1961 to $417,000 in 1964. Southern has not been plagued with the negative net work-

* 1961-1963 are calendar year figures; 1964, for the year ended September 30.

ing capital problem common to so many supplementals, for it had positive net working capital of $490,000 in 1963 and $524,000 in 1964. As of September 30, 1964, Southern had current assets of $1,276,106 and current liabilities of $748,510. Its cash balance exceeded $283,000 as of the latter date and the carrier is meeting its obligations as they fall due.

With worldwide authority including split charters, inclusive tours, and the ability to charter to airfreight forwarders, the applicant estimates a substantial increase in its civil traffic. For 1965 it contemplates no additional aircraft but some modest increase in expenses for sales, advertising, and additional ground personnel. Under its

projection for 1965 as a future year, dependence on military revenues would be reduced from the 87.6 percent of 1963 to roughly 66 percent. In total, the applicant foresees revenues of $6,394,000, operating expenses of $5,727,000, for a net income of $351,000.

Standard Airways, Inc.

The dominant figure in Standard Airways is Shields B. Craft, its president, general manager, and controlling stockholder for the past 18 years who has broad and extensive experience in supplemental air carrier operations. Standard originated in 1945 as a partnership doing business under the name of Standard Air Cargo, and officially adopted its present name upon incorporation in 1960. The applicant received an interim certificate authorizing it to engage in supplemental air transportation in 1962

which, as later appears, is presently suspended pursuant to Board order.[41]

In the last few years Standard has concentrated primarily on individually ticketed passenger service, and, more recently, on military CAM movements. To illustrate, in 1961 individually ticketed operations accounted for some 90 percent of the carrier's transport revenues; however, beginning in 1962 there was a swing to military operations. The latter represented 42.8 percent of Standard's revenues in 1963, while individually ticketed services were drastically curtailed during the phase-out for such operations required by Public Law 87-528. Civil passenger revenues in the 1961-1963 period were derived predominantly from package vacation tours to Hawaii and Las Vegas, which were sold on either an individually ticketed or pro rata charter basis.[42]

The applicant's financial difficulties became acute in mid-1963 when Standard was suspended by MATS from participation in CAM movements for 14 days following an aircraft accident involving the carrier which occurred in May of that year. After it was unsuccessful in carrying out a creditor's plan of arrangement, Standard suspended

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[41] The interim certificate was granted by Order E-18883, October 5, 1962, and suspended by Order E-20468, February 12, 1964.

[42] Standard's percentage participation in the various categories of business is indicated below:

	Transport Revenues (000)			
	Total	% Civil	% Military	% Other
1961	$1,651	6.5	3.1	90.4
1962	2,687	7.9	33.1	59.0
1963	2,983	37.1	42.8	20.1

all operations on January 31, 1964. On the same day the Administrator, FAA, suspended the carrier's air carrier operating certificate because of the uncertainties of its financial condition, and thereafter, on February 4, 1964, Standard filed a petition in bankruptcy under Chapter XI of the Chandler Act. These events were followed by the Board's order of February 12, 1964, suspending Standard's interim certificate on the ground that the carrier was not fit, willing, and able properly to perform the transportation authorized thereby. So far as appears from the record, Standard has acquiesced in the suspension and has no intention of seeking authority to reinstitute operations until final decision on its application in this case.

As of the time of the filing of the bankruptcy petition, Standard listed total assets of $152,483 and total liabilities of $499,955. A debtor's plan of arrangement was disapproved by the Court and the carrier adjudicated bankrupt on April 27, 1964. Subsequently, on September 30, 1964, the applicant received its discharge in bankruptcy. It would appear that the assets of the bankrupt's estate are more than sufficient to satisfy taxes and other exempt priority creditors, so that there will be no surviving claims or residual liabilities. For the present, applicant has no aircraft, owned or leased, no ground equipment, and no paid employees.

Applicant's future financing is dependent on arrangements, made or contemplated, with a Mr. S. H. Smith, who was long associated with surface transportation but who has no aviation experience. On June 15, 1964, Messrs. Craft and Smith entered into a written option agreement

under which Smith agreed to pay $20,000 for 75 percent of Standard's outstanding stock if (1) Standard receives an unqualified discharge in bankruptcy, (2) Standard's interim certificate, records, and files are released, and (3) the suspension of the certificate is removed and the change of management approved by the Board.[43] According to Mr. Craft, there is also an oral side agreement whereunder Mr. Smith will furnish $100,000 in capital for the company, which is available when needed.

Standard's future plans and proposals are flexible and dependent to some extent on the season of the year in which authority might be received. Generally stated, these plans are in two phases. In the initial phase, with the $100,000 in capital and no liabilities, applicant asserts that

it would be able to lease one DC-3 and one L-049 from Las Vegas-Hacienda Hotel Corporation under unusually favorable conditions that would require the lessor to absorb much of the expense involved in maintenance, ground equipment, etc. Supervisory employees would be paid minimal amounts for their administrative and managerial duties, and the officers—including Mr. Smith who would serve as executive vice president—agreed to forego any salary or other compensation until the carrier returns a profit. Applicant's efforts would be concentrated to a large extent, as heretofore, on promoting and providing package passenger tours to Hawaii and Las Vegas. After this initial phase, and depending on developments, the aircraft

[43] Mr. Craft testified that he and Mr. Smith have agreed that these conditions precedent have been substantially met, although there is no written evidence of record embodying such an understanding.

fleet would be expanded to include another DC-3 and L-049, larger piston equipment, and, hopefully, jet aircraft within two years. The forecast submitted by the applicant shows annual transport revenues of some $438,000 and a monthly profit of $8,800 before taxes and management expenses.[44]

Stewart Air Service

The applicant is Edgar A. Stewart, an individual proprietorship doing business as Stewart Air Service. Mr. Stewart is also a general partner with his son in the operation of Chico Air Service, a fixed-base air taxi type operation located at the Municipal Airport, Chico, California. The fixed-base operation is 100 percent financed by Mr. Stewart, and he would sever all interest therein should he receive a permanent certificate in this proceeding.

From 1948 to January 1962 Mr. Stewart was engaged in activities of a large irregular or supplemental air carrier under appropriate Board authorizations. His operations, conducted out of Hawthorne, California, involved primarily, but not exclusively, the provision of specialized short-haul charter services within the State of California, such as racetrack charters, transporting dance bands, vacationers, hunting and fishing parties, etc. As of the time of cessation of operations, Stewart's transport type aircraft consisted of four DC-3's and one DC-4 owned and operated by him, and in addition, he had one DC-4 under lease.

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[44] At some point Standard intends to employ Theodore J. Bodwell as its operations manager. This is the same Mr. Bodwell who had active direction and control of Paramount Airlines, Inc., which was found by the Board to have knowingly and willfully participated in the unlawful operations of the Hermann combine. Orders E-20263 and E-20264, October 23, 1963.

(10206, 10207)

On January 5, 1962, Stewart was grounded by an emergency order of the Administrator, FAA, revoking his air carrier operating certificate. The order recited an extensive list of alleged safety violations, including the repeated falsification of Stewart's training, operations, and maintenance records, which were said to have occurred in the period between April 15, 1960, and January 4, 1962. On the basis of these purported violations, the Administrator

10207

concluded that Stewart was no longer qualified to conduct a safe operation.[45] Upon appeal, and after extensive public hearing at which Stewart was present and represented by counsel, Board Examiner Caldwell issued an oral decision on the record on February 3, 1962, affirming the Administrator's order of revocation.[46] Since Stewart did not perfect a timely appeal to the Board, the Examiner's decision became final on February 7, 1962, and remains in effect.

Although Stewart has conducted no transport operations since the revocation, he has maintained ownership of three DC-3's and one DC-4 in operative or near-operative con-

[45] The portion of the emergency order containing the Administrator's ultimate findings reads as follows: "By reason of the foregoing, you [Stewart] have demonstrated such a lack of that degree of judgment, integrity, care and responsibility required of the holder of an air carrier operating certificate that the Administrator can no longer find that you are properly and adequately equipped and able to conduct a safe air transportation operation in accordance with the Federal Aviation Act and the Civil Air Regulations, nor are you entitled to the faith and confidence reposed by the Administrator in the holder of an Air Carrier Operating Certificate."

[46] *Halaby, Administrator, FAA*, v. *Edgar A. Stewart*, Docket SE-268.

dition. He places a value of $250,000 on this aircraft fleet, together with some related equipment such as shop tools, spare parts, ground handling gear, etc. If granted a certificate, Mr. Stewart, as previously, would retain control, direction and ownership of the applicant. He estimates that $25,000 would be needed immediately to resume operations which he believes could be obtained on a personal loan basis, with an additional $100,000 available as needed from loans against the security of the flight equipment. The individual proprietorship at present has no liabilities.

Stewart's interest is in obtaining authority to conduct relatively short haul charter operations in interstate air transportation; he has no desire to provide service to foreign points, in long haul domestic markets, to or from Hawaii, or for the military except under long term contracts. The applicant believes that inclusive tour authority would increase its transport revenues by some 15 to 25 percent and estimates for 1965 as a future year gross revenues of $1.5 million and a profit of 2½ percent, assuming some operations of DC-4 or larger piston aircraft.

Trans International Airlines, Inc.

The applicant, formerly Los Angeles Air Service, was organized in 1946 by Mr. Kirk Kerkorian, its controlling stockholder, and since beginning operations with large aircraft it has continuously held appropriate Board authori-

zations to engage in air transportation. TIA's present interim operating certificate permits the conventional types of supplemental operations. In addition, it has been recently amended to permit the carrier to provide (1) trans-

pacific civil passenger charters subject to certain conditions, and (2) transatlantic civil passenger charters for the 1965 season.[47] Under the leadership of Mr. Kerkorian and Mr. Glenn A. Cramer, TIA has an experienced and well qualified management.

In October 1962 all of the carrier's outstanding stock was sold to the Studebaker Corporation. Subsequent efforts by Mr. Kerkorian to reacquire controlling interest in TIA culminated in the formation of Glenkirk, Inc., in February 1964, which, on September 8, 1964, purchased Studebaker's stock of the carrier. As of the latter date, Mr. Cramer succeeded Mr. Kerkorian as TIA's president and Mr. Kerkorian became Chairman of TIA's Board of Directors. Mr. Kerkorian owns 4,318 shares and Mr. Cramer 508 shares of the 5,146 shares of the outstanding stock of Glenkirk, Inc.

The applicant has executive offices at Las Vegas and its principal base for personnel and maintenance is at Oakland, California. All of its maintenance is contracted and performed primarily at Oakland. Because of the far-flung nature of its current operations TIA also maintains some personnel at other locations such as Chicago, Honolulu and Manila. The carrier's operations have not involved any presently significant deviations from safety requirements.[48]

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[47] See Orders E-18869, October 5, 1962, and E-21574, December 9, 1964; Order E-22045, April 16, 1965. The transpacific civil passenger charter authority does not permit split charters and is subject to, among other things, individual approval by the Board of each charter and to the general requirements of Part 295 of the Board's Economic Regulations.

[48] In 1962 and 1963 there were five instances of alleged safety violations. Two were settled for civil penalties totaling $750, two were noted for the record, and one letter of reprimand was issued.

(10208, 10209)

Between 1948 and 1956 the applicant was principally a domestic passenger carrier in the business of transporting individually ticketed passengers. Although thereafter TIA continued to perform civil operations, particularly individually ticketed passenger tours between California and Hawaii and transatlantic charters, the essential nature of its operations changed to that of a military contract operator, as shown below:[49]

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	Transport Revenues (000)*			
	Total	% Civil	% Military	% Other
1961	$ 5,682	3.5	69.7	26.8
1962	10,044	0.5	99.3	0.2
1963	10,883	3.0	97.0	—
1964	12,974	16.1	83.9	—

The military operations have been largely in the Pacific, consisting mainly of mixed passenger and cargo flights serving the Mid-Pacific islands, with Honolulu as a base, pursuant to the MATS Inter-Island Contract (1963 revenues—$1,360,289) and the MATS Pacific passenger contract operated with DC-8 and Constellation equipment (1963 revenues—$9,156,604).

During 1964 the applicant made a concerted effort to increase its domestic civil passenger charters, with notable

[49] Prior to the termination of its individually ticketed authority, California-Hawaii revenues from this source were substantial, totaling $878,150 in 1960 and $1,484,097 in 1961. TIA was particularly active in transatlantic passenger charters during 1959 and 1960 but thereafter its participation declined. Thus, this source provided $208,407 in revenues in 1963 as contrasted to $1,329,539 in 1959.

* Calendar years 1961-1963; year ended September 30, 1964.

success. Only 18 such flights, producing $228,406 in revenues, were operated during 1963. In contrast, with heavy concentration on the resort markets of Miami, Las Vegas, and Honolulu, for the period January 1, 1964, through December 15, 1964, TIA flew 343 domestic charter flights for total revenues of $2,191,975.[50]

TIA was the first of the supplementals to purchase and operate turbo-jet aircraft. Its first fan jet, a DC-8 in passenger configuration, was placed in operation in July 1962; its second, a DC-8F, began service on May 1, 1963; and another DC-8F was ordered for delivery in May 1965. One of the jets is committed to perform passenger flights over the routes of Lufthansa, the West German carrier, between April and October 1965. The applicant also owns and operates four L-1049 Constellations.

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TIA's net worth has been among the highest in the industry and the carrier has recently experienced substan-

[50] Prior to 1963 the applicant had not been the subject of any formal economic enforcement action. The intensification of domestic charter activity in 1963 and 1964 led to several formal complaints against TIA by those competitively affected in the East Coast-Florida market, primarily on the ground that the applicant was offering and performing air transportation services in the form of "charters" which were not authorized by its interim operating certificate. (Dockets 14910, 14961, and 15005). On July 1, 1964, the Director, Bureau of Enforcement, declined to institute enforcement proceedings on any of these complaints, and the Board affirmed his decision in Docket 15005 by Order E-21440, October 23, 1964. A similar complaint was filed by Pan American World Airways against TIA and Pan America Tours, Inc., in June 1964, and is now pending (Docket 15358). In addition, there are pending court actions brought by Northeast against TIA, as well as World and Capitol, which involve requests for injunctive relief and damages on account of alleged unlawful "charter" operations.

tial operating profits. Its weaknesses have been in an insufficient proportion of civil revenues, where there has been substantial recent improvement, and in a distinctly unfavorable net working capital position. Thus net worth has climbed from a negative $201,000 in 1961 to a positive $3,961,000 in 1964 and operating profits from $79,000 to $2,884,000 in the same years. Net working capital, however, has taken a sharp skid from a positive $279,000 in 1961 to a negative $4,463,000 in 1964.[51]

TIA believes that it and other supplemental carriers with pure jets being operated or on order should be granted worldwide authority, including split charters and inclusive tours. Assuming the grant of inclusive tour authority and 1965 as a future year, the applicant estimates revenues at $19,629,000, total expenses of $14,985,160, for a net income of $1,815,420.

United States Overseas Airlines, Inc.

The predecessor of the applicant was Ralph W. Cox, Jr. d/b/a Ocean Air Tradeways, an individual proprietorship which received authority as a large irregular carrier in 1947. The applicant was incorporated in 1950 and Mr. Cox, owner of 80 percent of its stock, has continued since that time as the principal executive officer of the company. USOA was one of the 15 applicants in this proceeding which was granted interim operating certificates by the Board.[52]

In recent years the applicant has experienced a serious deterioration in its financial condition which led ultimately

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[51] Appendix C.

[52] Order E-18884, October 5, 1962.

to revocation of its interim certificate. The Board expressed reservations concerning USOA's financial fitness at the time its interim operating certificate was granted, and on September 24, 1964, found it necessary to suspend the carrier's certificate immediately on the ground that the carrier was no longer fit from a financial standpoint.[52a] Subsequently, after hearing, the Board issued its decision finding, *inter alia,* that "the carrier's financial weakness, under any reasonable test of fitness that might be applied has now reached a point where it can no longer be found financially fit, willing, and able to hold authority as a

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supplemental carrier." [53] After the Board's action, the FAA suspended applicant's air carrier operating certificate, so that USOA does not now possess either economic or safety authority to engage in air transportation.

During the some 17 years of active service, USOA's transport activities were substantial and varied, reaching into virtually every facet of civil and military operations open to a supplemental air carrier. The applicant responded in many emergency situations, notably those involved in the Berlin Airlift, Korea, and the transportation of Hungarian refugees. Based in Wildwood, New Jersey, USOA was one of the few supplementals to have its own complete facilities for maintenance and overhaul require-

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[52a] Order E-21325, September 24, 1964.

[53] *USOA Interim Certificate Proceeding,* Order E-21562, December 7, 1964, (p. 7). Reconsideration was denied by Order E-21677, January 14, 1965.

ments. All of its operations were conducted without a passenger fatality.[54]

A significant contributing factor to the applicant's difficulties was its continued reliance on revenues from individually ticketed passenger services despite the phase-out of such operations required by Public Law 87-528. As illustrated below, the degree of concentration was particularly evident during 1962 and 1963, the years immediately preceding expiration of such authority:

Transport Revenues (000)

	Total	% Civil Charter	% Military	% Other
1961	$9,691	1.4	59.3	39.3
1962	5,694	4.1	11.6	84.3
1963	4,746	6.2	4.6	89.2

10212

In making its decision to revoke USOA's interim operating certificate the Board had before it a history of the carrier's operations and financial condition through mid-1964. More recent information does not provide a realistic basis for anticipating any substantial improvement in the situation. As remnants of a once sizeable aircraft fleet, USOA has 6 DC-4 aircraft, four of which it intends to sell. Its pro forma balance sheet as at December 15, 1964, lists

[54] There were, however, over 20 instances of alleged safety violations in the 1959-1964 period, which involved civil penalties of some $6,200 and the issuance of numerous letters of correction or reprimand. On the economic side, one cease and desist order was issued by the Board as the result of the carrier's operations in excess of applicable frequency limitations on individually ticketed services. Order E-17822, December 12, 1961. In addition, USOA was twice disqualified by MATS for military contract service, once between March and October 1962 and again in 1963.

$317,923 in current assets. Some $243,000 are in accounts receivable and about $130,000 of this total represents accounts which, according to the applicant's financial witnesses, are not collectable. In contrast, USOA shows total current liabilities of $949,908 and a loss of $408,537.[55] No known source for additional financing was indicated on the record.

USOA also seeks liberalization of the "charter" definition to include split charters and inclusive tours. Assuming a certificate containing this authority and the initial use of two leased DC-7's, the applicant presented an estimate for 1965 as a future year that shows total flight revenues of $4,585,600, of which $1,779,600 (about 38 percent) would be from civil charters and inclusive tours, with the balance from military or other government charters. Giving effect to total costs of $4,254,700 the applicant predicts a net profit of $372,900. Using the same revenue estimate but USOA's actually experienced costs as opposed to the theoretical lower costs utilized by the carrier, the Bureau forecasts a net loss of $482,400 (with experienced costs for the six months ended June 30, 1961) or a loss of $1,388,800 (if the estimate is predicated on actual costs for June and July 1964).

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[55] In addition, there is controversy concerning whether a $1.5 million item representing monies owed Ocean Air Tradeways, a partnership wholly owned by individual stockholders of the corporation, constitutes a long term debt or has been "forgiven" and might therefore appropriately be reflected as contributed capital. Although there was some oral testimony to the effect that the debt had been forgiven, the only written evidence of record is a written agreement whereunder the parties in interest agree to subordinate the debt to other creditors but not to eliminate it as an outstanding liability of the company.

(10212, 10213)

Vance International Airways, Inc.

Vance Roberts, the principal figure in this applicant, has had considerable aviation experience which extends back some thirty years. Prior to 1960, he operated small aircraft as an air taxi operator and large aircraft as a private carrier for hire. In 1960 he received, as an individual pro-

prietorship, interim authority from the Board which authorized operations as a supplemental air carrier and exempted him from the provisions of Title IV of the Act and Part 298 of the Board's Economic Regulations to the extent necessary to permit continuation of his air taxi services while holding supplemental authority. In 1962 the Board issued him similar authority pursuant to Public Law 87-528.[56] Recently the Board approved the transfer of Vance Roberts' authority to the applicant, Vance International Airways, Inc., a corporation wholly owned and controlled by Mr. Roberts and his wife.[57]

Prior to 1964 Vance Roberts' air transport business consisted primarily of the operation of charter flights, mostly of the single entity variety, in the Pacific Northwest, with some transborder operations into Canada. His home base consistently has been located at Boeing Field, Seattle, and all necessary maintenance and overhaul have been contracted. Applicant's aircraft fleet now consists of one C-46, one DC-3, and one DC-7, all owned by the carrier, and the applicant hopes to acquire an additional DC-7 in

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[56] Order E-19112, December 19, 1962.

[57] See Orders E-21468, January 6, 1965, and E-22050, April 16, 1965.

May 1965 or sooner. There is no record of either economic or safety violations attributable to the carrier.[58]

Through the end of 1963 Roberts' operations with large aircraft were exceedingly modest, producing revenues of $8,000 in 1961, $23,000 in 1962, and $17,000 in 1963. In 1964, however, there was some expansion. To illustrate, in the first quarter of 1964 charter revenues totaled about $9,000; between April 1 and October 15, 1964, they rose to a total of approximately $150,000. The 1964 revenues through October 15, 1964, were almost equally divided between civil charters ($80,309), of which roughly 16 percent were derived from civil cargo charters, and domestic CAM operations ($80,333). In April 1964 an additional sales office was opened at Los Angeles to aid in the expansion program.

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In revenues, expenses, assets, and liabilities Vance has been the smallest of the operating supplementals, with operating results normally at or near the break-even point. The recent expansion of its operations has caused some strain on its resources. Its operating picture shows losses of $9,000 in 1962, $15,000 in 1963, and $1,000 in 1964. However, net worth has decreased from $41,000 in 1961 and 1962 to $24,000 in 1964, and its negative net working capital position has increased from $9,000 in 1963 to $45,000 in 1964.[59]

Considering 1965 as a future year, and assuming the operation of an additional DC-7 from June 1965 forward, the applicant forecasts a net profit of $101,421 on total

[58] The FAA suspended Roberts' DC-7 operation between August 13 and August 26, 1964, on the basis of a complaint which, so far as appears from this record, was unfounded.

[59] Appendix C.

revenues of $902,355. As a matter of judgment, the carrier believes it could increase its total revenues by 30 percent with authority to perform inclusive tours (25 percent) and split charters (5 percent). Expansion to the extent indicated would also entail new sales offices in Oakland/San Francisco and Honolulu, as well as additional flight crews and ground personnel.

World Airways, Inc.

This applicant is owned and controlled by Edward J. Daly, its president and sole stockholder, who has retained a competent and experienced staff to conduct its extensive operations. World is one of the applicants herein holding the conventional type of interim operating certificate.[60] In addition, its interim certificate was amended so as to make World, together with Trans International Airlines, the only two supplementals authorized to conduct traditional planeload civil passenger charters across the Pacific pending resolution of the issues in this proceeding.[61] More recently World has been granted authority to operate transatlantic civil passenger charters during the 1965 season.[62]

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World is now the largest and the most successful financially of the supplemental air carriers. Its strength has been derived primarily from its vast military services,

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[60] Order E-18875, October 5, 1962.

[61] Order E-21304, September 21, 1964, reconsideration denied by Order E-21573, December 9, 1964. As noted in conjunction with the discussion of Trans International Airlines, *supra*, this authority is subject to various conditions, including specific Board authorization for each charter and general compliance with the requirements of Part 295 of the Board's Economic Regulations.

[62] Order E-22045, April 16, 1965.

and World's civil operations, at least until 1964, have played a relatively minor role. Thus, for example, in 1963 World's interstate civil cargo and passenger operations contributed only about $100,000 to a total of $20 million in revenues. Although World did have in the same year $1.7 million in revenues from transpacific civil passenger and cargo operations that were earned pursuant to its contract with Western Electric Company under which it provides scheduled service with DC-6 aircraft between Oakland and Kwajalein, Marshall Islands, via Honolulu, the bulk of its revenues have been obtained from two military operations: MATS international operations with jets over a route between California and the Philippines, Viet Nam, Bangkok, and Okinawa, and the LOGAIR daily domestic service with DC-6's.[63]

The dominance of the military revenues is illustrated by the tabulation below:

Transport Revenues (000)

	Total	% Civil Charter	% Military
1961	$14,632	9.2	89.0
1962	23,063	7.4	92.5
1963	20,462	8.7	90.2
1964*	24,852	10.8	89.2

In 1964 World undertook substantial and intensive steps to increase its civil operations. The carrier has been at-

[63] None of its operations has involved the carrier in asserted violations of an economic nature requiring formal enforcement action except as noted in f.n. 65, *infra*. Between 1960 and 1963 there were some 12 alleged safety violations that were settled on the basis of $2,500 in civil penalties and letters of reprimand or correction.

* Year ending September 30, 1964.

tempting to utilize its recently acquired transpacific civil passenger charter authority but has experienced considerable difficulty in obtaining the necessary landing rights. Noteworthy among World's achievements have been its highly successful single entity charter operation for the Chevrolet Motor Division of General Motors Corporation

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which alone produced $660,966 in revenues, as well as the around-the-world charter operation for the Tractor Division of the Ford Motor Company.[64] In addition, World developed in conjunction with Nationwide Charter and Conventions, Inc., its agent, a program designed to produce over $2 million in revenues from the operation of pro rata charters during the December 1964-May 1965 period between Boston, New York City, and Philadelphia, on the one hand, and Miami, on the other hand, and between New York and Honolulu. However, this latter program was not successfully implemented due to judicial injunctive action.[65]

The applicant's fleet presently consists of three Boeing 707-373C pure jets, with a fourth jet under contract for

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[64] The Chevrolet sales incentive program involved transporting some 5,610 passengers from 37 departure cities to New York for two days, Nassau for two days, and return home. In total, this all-jet service took 34 days to complete and required the operation of approximately 145,000 aircraft miles.

[65] At the instance of Northeast Airlines a permanent injunction has been entered enjoining World from carrying out its arrangements with Nationwide on the ground that the types of charters contemplated may not be operated lawfully under World's interim operating certificate. Similar actions by Northeast are pending against Capitol and TIA.

delivery in October 1965, and seven DC-6A/B's.[66] Until recently these aircraft, all owned by the carrier, were maintained and overhauled under contractual arrangements. On October 1, 1964, World established an aircraft maintenance facility at Oakland International Airport, known as the World Air Center, which is a wholly owned subsidiary of the company. This facility has the capability to provide base and line maintenance not only for World's piston and jet aircraft but for other carriers as well.

Except for its need for further diversification to increase the proportion of civil revenue for its economic base there can be no question concerning World's financial and operational strength. In the year ended September 30, 1964, it led the supplemental industry in total operating revenues, operating profits, operating ratio, assets, net worth, and working capital. Operating profits have progressively grown from $1,261,000 in 1961 to $6,930,000 in 1964 while net worth has increased from $1,690,000 to $8,321,000 in the same years. World has had a healthy net working capital position in three of the four years during the 1961-1964 period, which reached the level of $4,654,000 in 1964.[67]

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Reduced to its essentials, World's position is that it and other supplementals having pure jet aircraft should receive unconditional worldwide authority, while other applicants would be restricted to interstate operations. It also supports split charter authority (for affinity charters only) and inclusive tour authority. Assuming that it receives the

[66] Press reports indicate that World has ordered a fifth Boeing 707 for delivery in the spring of 1966. *Aviation Daily*, Vol. 159, No. 18, May 26, 1965, p. 152.

[67] Appendix C.

broad authorization it seeks and the right to transport inclusive tours, the carrier's future year forecast for commercial charter operations is $7,630,235 in revenues, expenses of $5,959,843, for a net income of $625,196.[68]

Zantop Air Transport, Inc.

The predecessor of the applicant was Zantop Flying Service, a partnership founded in 1946 by the Zantop brothers —Howard, Lloyd, and Duane. Ten years later the business was incorporated as Zantop Air Transport, Inc., the present applicant. Howard Zantop serves as President, Lloyd as Vice President and Treasurer, and Duane as Vice President and Secretary; each owns one-third of the outstanding stock of the company. The balance of Zantop's managerial staff is well qualified and experienced in airline operations.

In 1953 Zantop began its now extensive operations transporting property for Ford, General Motors, and Chrysler purportedly as a commercial operator or private carrier for hire, for which no economic authority from the Board was required. These operations, together with the LOGAIR military contract service begun in 1960, still form the backbone of the company's air transport activities. The automotive operations generally involve the transportation of parts and material for two or more of the manufacturers aboard the same aircraft, largely from the Detroit area to seven or eight assembly plant locations in the continental United States on a regular and expedited basis.

In 1962 the applicant sought to acquire by transfer the temporary supplemental air carrier certificate of Coastal Air Lines for the reason, among others, that air carrier

[68] World also makes the request, unique among the applicants, that the descriptive label of its classification be changed from "supplemental air carrier" to "independent air carrier."

status was necessary in order to enable Zantop to continue its military services. In May 1962 the Board approved the transfer and granted Zantop an exemption authorization that would permit it to continue to perform the automotive operations, subject to certain conditions.[69] Thereafter the Board awarded the applicant the conventional type of in-

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terim certificate under Public Law 87-528 and determined that the exemption previously granted with respect to the contract services continued in full force and effect.[70]

As is evident from the foregoing, the applicant has been almost exclusively a civil and military cargo specialist operating between points in the continental United States. Although Zantop has been able to maintain a favorable balance between civil and military operations, the civil operations have consisted predominantly of the automotive cargo services for Ford, General Motors, and Chrysler.[71] To illustrate, for the year ended June 30, 1964, Zantop grossed $5,005,838 from the automotive operations, $751,530 from civil charters, and $8,344,442 from the domestic military services, for total transport revenues of $14,101,-

[69] Order E-18318, May 9, 1962. The primary conditions prohibited the provision of supplemental air transportation between the same points involved in the automotive contracts and the commingling of common carrier and contract cargo, and required Zantop to maintain separate books and records for the two different types of operation.

[70] Order E-18864, October 5, 1962.

[71] In 1962, Zantop had $7,851,000 in total transport revenues of which 33.8 percent were civil and 56.2 percent military. The comparable figures for 1963 were $12,969,000 in total revenues with 38.7 percent civil and 61.3 percent military. For the year ended September 30, 1964, total transport revenues reached $16,822,000 (53.7 percent military and 46.3 percent civil).

(10218, 10219)

811. The carrier did not begin civil passenger charters until the second half of 1963. Revenues from this source were about $14,000 in 1963 and reached a total of $51,300 in the first three quarters of 1964.

With the dollar volume of its present operations reaching the $17 million mark, Zantop's aircraft fleet has expanded rapidly. As of September 1964, it owned 31 aircraft consisting of 21 C-46's, two DC-4's, one DC-3, and seven DC-6A's. It leases an additional 28 aircraft—22 C-46's, one DC-4, two DC-3's, and three Argosy turbo-prop AW650's which are being leased-purchased from a Zantop subsidiary. Of these 59 aircraft three DC-3's and one DC-4 are in passenger configuration. A good part of the maintenance and overhaul of these aircraft is performed at Zantop's home base at Detroit Metropolitan Airport, Inkster, Michigan, and at its west coast base at Ontario International Airport, Ontario, California. The applicant also locates additional personnel at various points throughout the country to perform routine maintenance functions as may be required.[72]

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The applicant has had significant and continuous growth in both its revenues and total assets. Gross revenues at the end of 1958 were $1,383,904 in contrast to the present day level and total assets increased from $4,496,000 in 1962 to $11,723,000 at the end of September 1964. Zantop's strength is also illustrated by the growth in operating profits from

[72] Although no economic enforcement action has been brought against the applicant, the record shows some 11 instances of alleged safety violations in the 1960-1964 period. The latter resulted in civil penalties totaling $2,250 and various letters of reprimand or correction.

$714,000 in 1962 to $2,194,000 in 1964 and the increase in net worth from $523,000 to $1,513,000 in the same years.[73] The one question mark has been the carrier's net working capital position which has hovered around a negative figure of about $1 million for the past three years. According to the applicant's witnesses, the persistent deficiencies in working capital do not reflect any inherent weakness in Zantop's financial condition but are attributable to the fact that the carrier's current liabilities always include substantial amounts for contract payments on aircraft that are due within a 12-month period, the collateral for which is not offset in current assets but in fixed assets of property and equipment.

Assuming 100 percent utilization of its existing military contracts and 10 percent increase in its automotive contract and civil charter revenues, Zantop forecasts for 1965 total revenues of $17,735,000 and net earnings of $817,745.[74] The applicant has made no precise estimate for the future should it receive the worldwide certificate, with inclusive tour and split charter authority, which it seeks, although it contemplates the addition of two piston aircraft of the DC-6B type and two convertible turbo jets in that eventuality. The carrier does not now have any definitive plans for the purchase of pure jet aircraft.

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[73] Appendix C.

[74] The total revenue figure is composed of $6 million in contract revenues, $1 million from civil charters, and $10,735,000 from its military services.

(10220)

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APPENDIX B

(See opposite) ☞

APPENDIX B

GEOGRAPHICAL AND FUNCTIONAL DISTRIBUTION OF SUPPLEMENTAL CARRIER CHARTER REVENUES
1961

	AAXICO	AMERICAN FLYERS	CAPITOL	JOHNSON	MODERN	ONA	PURDUE	SATURN	SOUTHERN	STANDARD	TIA	USOA	VANCE	WORLD	ZANTOP	TOTAL
CIVIL PASSENGERS	$	$ 278,753	$ 346,623	$60,894	$ 72,424	$ 382,526	$349,343	$157,244	$	$ 95,818	$ 97,276	$ 71,976	$	$ 1,599,254	$	$ 3,512,131
Interstate		257,130	279,313	60,894	62,276	363,092	302,019	157,244		95,818	97,276	66,948		490,148		2,232,158
Overseas																
Latin America & Caribbean		12,775														12,775
Transpacific														1,109,106 1/		1,109,106
Foreign																
North America		8,848			10,148	19,434	47,324					5,028				90,782
Latin America & Caribbean																
Transpacific			67,310													67,310
CIVIL CARGO	$	$ 9,311	$ 73,588	$ 3,551	$ 366	$	$ 24,512	$	$ 389,620	$	$ 17,440	$ 35,427				$ 553,815
Interstate		9,311	39,348	3,551	366		24,512		43,209		17,440	10,003				147,740
Overseas																
Latin America & Caribbean									138,226							138,226
Transpacific														1/		
Foreign																
North America			2,412						62,216							64,628
Latin America & Caribbean									145,969			25,424				171,393
Transpacific																
Transatlantic			31,828													31,828
MILITARY PASSENGER	$ 267,540	$ 936,407	$ 2,487,248	$	$ 22,009	$10,583,105	$	$664,614	$2,400,856	$ 50,703	$1,165,168	$2,991,540	$	$ 4,032,711		$25,601,901
Interstate	267,540	936,407	568,196		22,009	3,632,176		650,899		50,703	41,850	647,011				6,816,791
Overseas						1,640,596					292,024					1,932,620
Foreign			1,919,052			5,310,333		13,715	2,400,856		831,294	2,344,529		4,032,711		16,852,490
MILITARY CARGO	$3,900,659	$	$ 7,328,642	$	$ 7,487	$	$	$	$ 597,856	$	$2,982,887	$2,621,759	$	$ 8,995,382	$5,047,864	$31,482,536
Interstate	3,900,659		6,447,092		7,487							2,609,599		7,792,815	5,047,864	25,805,516
Overseas											732,269					732,269
Foreign			881,550						597,856		2,250,618	12,160		1,202,567		49,447,751
TOTAL	$4,168,199	$1,224,471	$10,236,101	$64,445	$102,286	$10,965,631	$373,855	$821,858	$3,388,332	$146,521	$4,262,771	$5,720,702	$	$14,627,347	$5,047,864	$61,150,383

1/ Mixed passenger/cargo operations. Cargo revenue is included with passenger revenue.

SOURCE: Bureau Exhibits BER-100, 200, 300, and 400.

GEOGRAPHICAL AND FUNCTIONAL
DISTRIBUTION OF SUPPLEMENTAL
CARRIER CHARTER REVENUES
1962

	AAXICO	AMERICAN FLYERS	CAPITOL	JOHNSON	MODERN	ONA	PURDUE	SATURN	SOUTHERN	STANDARD	TIA	USOA	VANCE	WORLD	ZANTOP	TOTAL
CIVIL PASSENGER	$	$ 349,277	$ 350,245	$75,059	$ 41,605	$ 598,951	$320,925	$175,897	$ 37,416	$ 185,619	$	$ 96,944	$15,394	$ 1,854,271	$	$ 4,101,604
Interstate		333,333	350,245	75,059	41,605	598,951	283,973	167,067		185,619		37,042	14,404			2,087,298
Overseas																
Latin America & Caribbean								8,830				2,083				10,913
Transpacific														1,854,271 1/		1,854,271
Foreign																
North America		15,944					36,952						991			53,887
Latin America & Caribbean												21,101				21,101
Transpacific									37,416 1/ 2/			36,718				74,134
CIVIL CARGO	$ 124,765	$ 23,781	$ 51,106	$ 9,355	$	$	$ 51,303	$	$ 326,522	$	$	$ 76,265	$ 2,684	$	$ 360,043	$ 1,025,824
Interstate		23,781	29,420	9,355			43,405		21,836			33,658	2,684		360,043	524,182
Overseas																
Latin America & Caribbean	8,160								148,699			18,743				175,602
Transpacific														1/		
Foreign																
North America	3,110						7,898		38,546			5,003				54,557
Latin America & Caribbean			6,345						117,441			6,458				130,244
Transpacific									1/ 2/							
Transatlantic	113,495		15,341									12,403				141,239
MILITARY PASSENGER	$ 639,126	$1,368,017	$ 6,233,586	$	$899,344	$10,192,167	$	$770,928	$3,781,792	$ 852,197	$ 4,693,047	$666,066	$	$10,292,512	$	$40,388,782
Interstate	639,126	1,368,017	298,125		899,344	1,992,033		770,928		852,197		129,770				6,949,540
Overseas						1,492,994					3,015,822			12,073		4,520,889
Foreign			5,935,461			6,707,140			3,781,792		1,677,225	536,296		10,280,439		28,918,353
MILITARY CARGO	$ 9,382,837	$ 20,986	$ 8,678,066	$	$ 14,104	$ 460,045	$	$ 7,020	$1,043,325	$	$ 5,427,115	$ 5,614	$	$11,204,764	$6,642,552	$42,886,428
Interstate	8,519,980	20,986	5,121,694		14,104	3,190					11,683	5,346		5,305,518	6,642,552	25,645,053
Overseas						331,809					2,772,663			636,733		3,741,205
Foreign	862,857 3/		3,556,372			125,046		7,020	1,043,325		2,642,769	268		5,262,513		13,500,170
TOTAL	$10,146,728	$1,762,061	$15,313,003	$84,414	$955,053	$11,251,163	$372,228	$953,845	$5,189,055	$1,037,816	$10,120,162	$844,889	$18,079	$23,351,547	$7,002,595	$88,402,638

1/ Mixed passenger/cargo operations. Cargo revenue is included with passenger revenue.
2/ Intra-Asia operations.
3/ Aaxico operated military overseas cargo charters in 1962. Revenue for those operations is included with military foreign cargo charters since it could not be segregated.

SOURCE: Bureau Exhibits BER-100, 200, 300 and 400.

GEOGRAPHICAL AND FUNCTIONAL
DISTRIBUTION OF SUPPLEMENTAL
CARRIER CHARTER REVENUES
1963

	AAXICO	AMERICAN FLYERS	CAPITOL	JOHNSON	MODERN	ONA	PURDUE	SATURN	SOUTHERN	STANDARD	TIA	USOA	VANCE	WORLD	ZANTOP	TOTAL
CIVIL PASSENGER	$	$ 706,824	$ 357,850	$85,762	$ 48,524	$ 588,373	$483,950	$ 395,366	$ 54,230	$1,109,809	$ 228,406	$245,478	$ 3,331	$ 1,780,316	$ 13,955	$ 6,102,175
Interstate		643,118	357,850	84,722	48,524	588,373	456,079	347,106		1,109,809	228,406	243,328	1,130	69,890	13,955	4,192,290
Overseas																
Latin America & Caribbean		20,011														20,011
Transpacific														1,710,426 1/		1,710,426
Foreign																
North America		43,695		1,040			27,871	48,260				2,150	2,201			125,217
Latin America & Caribbean																
Transpacific									54,230 2/							54,230
CIVIL CARGO	$ 6,155	$ 2,052	$ 141,848	$ 9,681	$	$ 17,411	$ 14,812	$	$ 468,098	$ 3,633	$	$ 19,196	$ 7,684	$ 31,840	$ 618,751	$ 1,341,161
Interstate	6,155	2,502	42,348	9,681		17,411	14,358		30,403	3,633		3,114	7,684	31,840	604,703	773,382
Overseas																
Latin America & Caribbean									195,452			8,330				203,782
Transpacific			85,500											1/		85,500
Foreign																
North America							454		27,849			7,752			7,597	43,652
Latin America & Caribbean									187,609						6,451	194,060
Transpacific									26,785							26,785
Transatlantic			14,000													14,000
MILITARY PASSENGER	$ 342,370	$1,657,448	$ 4,336,417	$	$746,013	$1,384,925	$ 90,368	$1,157,960	$4,028,752	$1,295,434	$ 8,124,499	$222,333	$ 270	$11,084,424	$ 133,834	$34,605,047
Interstate	342,370	1,657,448	226,974		746,013	794,087	90,368	1,157,960		1,295,434	244,595	222,333	270		133,834	6,911,686
Overseas											6,344,558			11,084,424		6,344,558
Foreign			4,109,443			590,838			4,028,752		1,535,346					21,348,803
MILITARY CARGO	$8,282,811	$	$ 7,754,786	$	$	$ 177,295	$	$	$1,078,970	$	$ 2,544,493	$	$ 999	$ 7,376,900	$7,816,144	$35,032,398
Interstate	8,242,453		6,717,882										999	4,629,056	7,816,144	27,406,534
Overseas	3/										1,450,791					1,450,791
Foreign	40,358 3/		1,036,904			177,295			1,078,970		1,093,702			2,747,844		6,175,073
TOTAL	$8,631,336	$2,366,324	$12,590,901	$95,443	$794,537	$2,168,004	$589,130	$1,553,326	$5,630,050	$2,408,876	$10,897,398	$487,007	$12,284	$20,273,480	$8,582,684	$77,080,780

1/ Mixed passenger/cargo operations. Cargo revenue is included with passenger revenue.
2/ Intra-Asia operations.
3/ Aaxico operated military overseas cargo charters in 1963. Revenue from these operations is included with military foreign cargo since it could not be segregated.

SOURCE: Bureau Exhibits BER-100, 200, 300, and 400.

GEOGRAPHICAL AND FUNCTIONAL
DISTRIBUTION OF SUPPLEMENTAL
CARRIER CHARTER REVENUES
1964

	AAXICO	AMERICAN FLYERS	CAPITOL	JOHNSON	MODERN	ONA[1]	PURDUE	SATURN	SOUTHERN	STANDARD[2]	TIA	USOA[3]	VANCE	WORLD	ZANTOP	TOTAL
CIVIL PASSENGER	$	$2,085,158	$ 5,182,595	$79,715	$ 134,441	$	$474,949	$3,878,041	$ 468,174	$	$ 2,368,686	$268,017	$103,020	$ 2,403,998	$ 63,502	$17,510,296
Interstate		1,978,896	1,239,428	79,715	134,441		409,712	1,357,263			2,351,911	227,672	98,553	983,277	63,502	8,924,370
Overseas											9,114			1,206,370		1,215,484
Foreign		106,262	3,943,167[4]				65,237	2,520,778[4]	468,174[5]		7,661	40,345	4,467	214,351		7,370,442
CIVIL CARGO	$ 72,647	$	$ 563,507	$	$	$	$ 39,209	$	$ 895,491	$	$ 53,000	$ 5,000	$ 15,957	$ 613,266	$ 8,214,219	$10,472,296
Interstate	72,647		340,191				39,209		27,865				15,957	132,405	8,122,174	8,750,448
Overseas									294,679			5,000		480,861		780,540
Foreign			223,316						572,947		53,000				92,045	941,308
MILITARY PASSENGER	$	$3,076,566	$ 2,983,999	$	$ 900,705	$	$ 65,933	$1,340,511	$3,497,555	$	$ 6,749,570	$498,766	$ 95,600	$11,466,192	$ 215,334	$30,890,731
Interstate		3,076,566	537,723		900,705		65,933	1,340,511			2,629,692	498,766	95,600		215,334	9,360,830
Overseas			442,086													442,086
Foreign			2,004,190						3,497,555		4,119,878			11,466,192		21,087,815
MILITARY CARGO	$8,592,414	$	$ 7,091,841	$	$	$	$	$	$ 877,670	$	$ 3,949,309	$	$	$10,931,711	$ 9,035,748	$40,478,693
Interstate	8,592,414		5,116,679								102,694			5,238,272	9,035,748	28,085,807
Overseas											196,299					196,299
Foreign			1,975,162						877,670		3,650,316			5,693,439		12,196,587
CIVIL	72,647	2,085,158	5,746,102	79,715	134,441		514,158	3,878,041	1,363,665		2,421,686	273,017	118,977	3,017,264	8,277,721	27,982,592
MILITARY	8,592,414	3,076,566	10,075,840	0	900,705		65,933	1,340,511	4,375,225		10,698,879	498,766	95,600	22,397,903	9,251,082	71,369,424
TOTAL	$8,665,061	$5,161,724	$15,821,942	$79,715	$1,035,146	$	$580,091	$5,218,552	$5,738,890	$	$13,120,565	$771,783	$214,577	$25,415,167	$17,528,803	$99,352,016
Percentage of Total Charter Revenues 7/ Civil	0.84	100.00	36.32	100.00	100.00		100.00	100.00	23.76		18.46	100.00	100.00	11.85	47.22	
Military	99.16	00.0	63.68	00.0	0.00		00.0	00.0	76.24		81.54	00.0	00.0	88.15	52.78	

1/ Voluntarily discontinued operations as of October 4, 1963.
2/ Conducted operations during the month of January. The geographical and functional distribution as well as the volume of the revenues derived from these operations is unknown because of incomplete reporting by the carrier.
3/ Interim certificate revoked by E-21562, dated December 7, 1964.
4/ The vast majority of this revenue was derived from transatlantic passenger operations.
5/ Presumably intra-Asia operations.
6/ Includes $7,016,119 from contract operations.
7/ The percentages recorded as civil and military were obtained by following the policy of the Department of Defense when awarding long-term contracts. That Department has announced that military transport contracts, beginning in fiscal 1966, will be limited in amount so that carriers who receive contracts will derive at least 30 percent of their transportation revenues from commercial sources. CAM operations are taken into account for carriers with long-term contracts in determining the 70 percent maximum imposed by the Department, but such operations are not considered for the carriers with no long-term contracts.

APPENDIX C

SUPPLEMENTAL CARRIERS FINANCIAL AND REVENUE DATA
FOR FISCAL YEAR ENDING SEPTEMBER 30, 1964
(DOLLARS IN THOUSANDS)

Carrier 1/	Transport Revenues: Contract and Charter: Civilian: Rank	Civilian: Amount (1)	Civilian: Percent (2)	Military: Rank	Military: Amount (3)	Military: Percent (4)	Individual Sales: Rank	Individual Sales: Amount (5)	Individual Sales: Percent (6)	Total: Rank	Total: Amount (7)	Total Operating Revenue 2/: Rank	Total Operating Revenue 2/: Amount (8)	Operating Profit: Rank	Operating Profit: Amount (9)	Operating Ratio: Rank	Operating Ratio: Percent (10)	Total Assets: Rank	Total Assets: Amount (11)	Net Worth: Rank	Net Worth: Amount (12)	Current Ratio: Rank	Current Ratio: Ratio (13)	Working Capital: Rank	Working Capital: Amount (14)
1964																									
Total Supplementals		25,240	25.1		71,865	71.6		3,315	3.3		100,420		103,033		12,817		87.56		5,090		19,625		0.9		(2,978)
AAXICO	11	104	1.2	5	8,547	98.8		-	-	5	8,651	5	8,733	5	723	4	91.72	5	7,082	2	5,517	1	4.1	2	4,599
American Flyers	6	1,483	33.8	7	2,890	65.9	6	13	0.3	8	4,386	8	4,433	7	207	7	95.33	6	4,612	10	228	8	0.5	10	(830)
Capitol Airways	2	3,340	31.8	2	11,137	66.4	2	295	1.8	3	16,772	2	17,933	4	924	5	94.85	2	6,102	5	952	9	0.4	13	(3,756)
Johnson Flying Service	14	72	100.0		-			-		14	72	11	824	13	(118)	13	(114.32)	10	793	7	450	5	1.5	5	144
Modern Air Transport	12	100	9.0	9	1,003	90.1	7	10	0.9	10	1,113	10	1,124	12	(67)	11	(105.96)	14	458	13	(111)	6	0.7	7	(99)
Overseas National 3/	15	21	100.0		-			-		15	21	15	21	14	(230)	15	(1,195.24)	13	504	14	(814)	11	9.2	15	(1,130)
Purdue Aeronautics	8	506	86.9	11	76	13.1		-		11	582	12	584	10	(33)	10	(105.65)	11	646	6	487	2	2.4	4	153
Roberts Vance	13	78	53.4	12	68	46.6		-		13	146	14	152 6/	8	(1)	8	(100.66)	15	175	11	24	8	0.5	6	(45)
Saturn Airways	3	3,455	73.6	8	1,220	26.0	5	21	0.4	7	4,696	7	4,704	11	(51)	9	(101.08)	8	1,677	9	236	7	0.6	9	(341)
Southern Air Transport	7	1,042	18.9	6	4,281	77.7	4	186	3.4	6	5,509	6	5,736	6	278	6	95.15	7	1,917	8	417	4	1.7	3	524
Standard Airways 4/	10	159	33.9	13	66	14.1	3	244	52.0	12	469	13	437	9	(31)	12	(107.09)	12	526	12	-8/	8	0.5	8	(278)
TIA	5	2,087	16.1	3	10,887	83.9				4	12,974	4	13,155	2	2,884	2	78.08	3	15,639	3	3,901	9	0.4	14	(4,463)
USOA 5/	9	310	9.2	10	499	14.9	1	2,546	75.9	9	3,355	9	3,447	15	(792)	14	(122.98)	9	1,535	15	(1,496) 7/	10	0.3	11	(891)
World Airways	4	2,690	10.8	1	22,162	89.2		-		1	24,852	1	24,913	1	6,930	1	72.18	1	31,701	1	8,321	3	1.8	1	4,654
Zantop Air Transport	1	7,793	46.3	4	9,029	53.7		-		2	16,822	3	16,837	3	2,194	3	86.97	4	11,723	4	1,513	6	0.7	12	(1,219)

1/ Sources of data: Columns 1, 3, 5, 8, and 9: CAB-BAS Air Carrier Analytical Charts and Summaries for fiscal year 1964. Columns 11 through 14: Analyses of CAB Form 41 Schedules for fiscal year 1964. Any exceptions as to sources are noted in separate footnotes.

2/ Two classifications of revenue have been omitted: (a) A miscellaneous column of other transport revenue, (b) A column of non-transport revenue.

3/ Since the carrier suspended operations 12/4/63, these data have little significance.

4/ Carrier suspended operations 2/12/64; last report filed 12/31/63; bankrupt 4/27/64. These data have limited significance.

5/ Carrier suspended operations 9/25/64.

6/ The source of information is Form 41. The analytical charts reported only $58(000) of operating revenue. Form 41 reported $152(000) which is included here.

7/ This figure was reported on CAB Form 41 as a positive $56(000) net worth, which reflected a $1,552(000) long term debt as forgiven and hence a part of net worth. However, E-21562 considered the debt as not forgiven and therefore not part of net worth.

8/ Less than $1(000).

SUPPLEMENTAL CARRIERS FINANCIAL AND REVENUE DATA
FOR FISCAL YEAR ENDING SEPTEMBER 30, 1963
(DOLLARS IN THOUSANDS)

Carrier 1/	Transport Revenues: Contract and Charter: Civilian: Rank	Civilian: Amount (1)	Civilian: Rank	Civilian: Percent (2)	Contract and Charter: Military: Rank	Military: Amount (3)	Military: Rank	Military: Percent (4)	Individual Sales: Rank	Individual Sales: Amount (5)	Individual Sales: Rank	Individual Sales: Percent (6)	Total: Rank	Total: Amount (7)	Total Operating Revenue 2/: Rank	Total Operating Revenue 2/: Amount (8)	Operating Profit: Rank	Operating Profit: Amount (9)	Operating Ratio: Rank	Operating Ratio: Percent (10)	Total Assets: Rank	Total Assets: Amount (11)	Net Worth: Rank	Net Worth: Amount (12)	Current Ratio: Rank	Current Ratio: Ratio (13)	Working Capital: Rank	Working Capital: Amount (14)
1963																												
Total Supplementals		14,924		15.5		75,682		78.7		5,500		5.8		96,106		97,737		5,185		94.69		99,096		12,782		0.7		(8,820)
AAXICO	13	54	15	0.6	4	9,270	1	99.4		-			5	9,324	5	9,357	3	1,440	2	84.62	5	6,850	1	4,663	1	3.3	1	3,769
American Flyers	8	481	8	22.0	9	1,643	7	75.0	5	67	3	3.0	10	2,191	10	2,319	11	(275)	12	111.86	6	4,831	9	170	9	0.4	10	(784)
Capitol Airways	2	2,411	9	14.9	2	13,443	6	83.1	3	339	5	2.0	2	16,193	2	16,331	6	164	7	99.00	2	19,938	5	588	10	0.3	15	(4,389)
Johnson Flying Service	11	190	1	100.0		-		-		-		-	14	190	12	977	7	99	4	89.87	11	719	6	486	2	2.3	3	227
Modern Air Transport	14	46	13	6.1	11	697	3	92.6	7	10	6	1.3	12	753	13	778	10	(71)	10	109.13	14	426	13	(52)	6	0.7	6	(74)
Overseas National	3	1,958	5	36.9	7	3,312	9	62.3	6	43	7	0.8	7	5,313	7	5,354	14	(650)	13	112.14	7	3,258	14	(536)	11	0.2	14	(2,326)
Purdue Aeronautics	9	466	3	86.9	13	70	12	13.1		-			13	536	14	553	9	(19)	9	103.44	12	693	7	458	4	1.7	4	76
Roberts Vance	15	13	2	92.9	14	1	13	7.1					15	14	15	15	8	(15)	15	200.00	15	51	12	20	7	0.6	5	(9)
Saturn Airways	6	926	4	47.6	10	1,020	11	52.4					11	1,946	11	2,001	8	(15)	8	100.75	9	2,107	10	163	9	0.4	9	(582)
Southern Air Transport	7	533	10	8.5	6	5,550	5	88.8	4	166	4	2.7	6	6,249	6	6,381	5	269	6	95.78	10	1,968	8	283	3	1.8	2	490
Standard Airways	5	1,028	7	32.4	8	1,729	10	54.4	2	419	2	13.2	9	3,176	9	3,141	12	(450)	14	114.33	13	612	11	31	7	0.6	7	(227)
TIA	12	148	14	1.3	3	10,971	2	98.7					4	11,119	4	11,151	2	2,193	1	80.33	3	16,493	3	2,642	8	0.5	13	(2,062)
USOA	10	352	12	6.9	12	270	14	5.3	1	4,456	1	87.8	8	5,078	8	5,143	13	(493)	11	109.59	8	3,169	15	(1,522)	10	0.3	12	(1,374)
World Airways	4	1,777	11	8.3	1	19,749	4	91.7					1	21,526	1	21,722	1	2,221	3	89.78	1	30,015	2	4,620	5	0.9	8	(424)
Zantop Air Transport	1	4,541	6	36.3	5	7,957	8	63.7					3	12,498	3	12,514	4	787	5	93.71	4	7,966	4	768	7	0.6	11	(1,131)

1/ Sources of data: Columns 1, 3, 5, 8, and 9: CAB-BAS Air Carrier Analytical Charts and Summaries for fiscal year 1963. Columns 11 through 14: Analyses of CAB Form 41 Schedules for fiscal year 1963.

2/ Two classifications of revenue have been omitted: (a) A miscellaneous column of other transport revenue, (b) A column of non-transport revenue.

SUPPLEMENTAL CARRIERS FINANCIAL AND REVENUE DATA
FOR FISCAL YEAR ENDING SEPTEMBER 30, 1962
(DOLLARS IN THOUSANDS)

Carrier 1/	Transport Revenues: Contract and Charter: Civilian: Rank	Civilian: Amount (1)	Civilian: Rank	Civilian: Percent (2)	Military: Rank	Military: Amount (3)	Military: Rank	Military: Percent (4)	Individual Sales: Rank	Individual Sales: Amount (5)	Individual Sales: Rank	Individual Sales: Percent (6)	Total: Rank	Total: Amount (7)	Total Operating Revenue 2/: Rank	Total Operating Revenue 2/: Amount (8)	Operating Profit: Rank	Operating Profit: Amount (9)	Operating Ratio: Rank	Operating Ratio: Percent (10)	Total Assets: Rank	Total Assets: Amount (11)	Net Worth: Rank	Net Worth: Amount (12)	Current Ratio: Rank	Current Ratio: Ratio (13)	Working Capital: Rank	Working Capital: Amount (14)
1962																												
Total Supplementals		9,222		12.2		52,240		74.3		10,224		13.5		75,686		77,775		5,266		93.23		56,951		6,778		0.8		(5,208)
AAXICO 3/																												
American Flyers	7	343	6	16.3	7	1,383	7	65.7	6	380	4	18.0	9	2,106	9	2,296	4	419	1	81.75	11	781	7	324	3	1.7	2	220
Capitol Airways	1	2,505	7	15.0	2	13,269	5	79.4	4	947	9	5.6	2	16,721	2	17,180	6	280	10	98.37	1	15,922	3	894	6	0.8	12	(1,077)
Johnson Flying Service	6	603	1	100.0		-							12	603	11	1,136	13	(60)	12	105.28	10	846	6	496	4	1.6	4	161
Modern Air Transport	13	45	12	4.9	9	744	4	80.7	8	133	6	14.4	11	922	12	944	8	101	5	89.30	13	344	13	31	6	0.8	6	(22)
Overseas National	4	608	9	7.7	4	5,893	6	75.1	3	1,350	5	17.2	4	7,851	4	7,969	9	58	11	99.27	7	1,937	11	71	7	0.7	10	(497)
Purdue Aeronautics 4/	8	295	2	99.3	12	2	12	0.7					13	297	13	351	11	7	8	98.00	12	753	5	518	1	4.0	3	170
Roberts Vance	14	16	3	69.6		-			11	7	3	30.4	14	23	14	25	12	(9)	14	136.00	14	55	12	41	2	3.7	5	8
Saturn Airways	5	607	4	45.1	10	642	9	47.8	10	96	8	7.1	10	1,345	10	1,397	10	26	9	98.14	8	1,057	10	122	9	0.4	9	(285)
Southern Air Transport	9	262	11	5.4	5	4,201	3	86.5	5	392	7	8.1	6	4,855	6	5,051	5	294	7	94.18	6	2,135	8	178	6	0.8	8	(246)
Standard Airways	11	147	10	6.0	11	401	11	16.3	2	1,914	2	77.7	8	2,462	8	2,590	7	171	6	93.40	9	910	9	140	8	0.6	7	(191)
TIA	12	52	14	0.6	3	8,731	1	98.0	9	129	10	1.4	3	8,912	3	8,950	2	1,001	4	88.82	3	11,239	2	1,138	8	0.6	14	(2,070)
USOA	10	196	13	3.2	8	1,147	10	19.0	1	4,698	1	77.8	5	6,041	5	6,125	14	(679)	13	111.09	5	4,638	14	(919)	8	0.6	13	(1,256)
World Airways	3	1,674	8	8.7	1	17,405	2	90.4	7	178	11	0.9	1	19,257	1	19,465	1	2,943	3	84.88	2	11,848	1	3,221	5	1.2	1	908
Zantop Air Transport 5/	2	1,869	5	43.6	6	2,422	8	56.4					7	4,291	7	4,296	3	714	2	83.38	4	4,496	4	523	8	0.6	11	(1,031)

1/ Sources of data: Columns 1, 3, 5, 8, and 9: CAB-BAS Air Carrier Analytical Charts and Summaries for fiscal year 1962. Columns 11 through 14: Analyses of CAB Form 242 for fiscal year 1962.
2/ Two classifications of revenue have been omitted: (a) A miscellaneous column other transport revenue, (b) A column of non-transport revenue.
3/ Not operating as supplemental during fiscal 1962. Inaugurated supplemental operations 10/9/62.
4/ Carrier inaugurated supplemental operations 12/7/61.
5/ Carrier inaugurated supplemental operations 6/8/62.

SUPPLEMENTAL CARRIERS FINANCIAL AND REVENUE DATA
FOR FISCAL YEAR ENDING SEPTEMBER 30, 1961
(DOLLARS IN THOUSANDS)

Carrier 1/	Transport Revenues: Contract and Charter: Civilian: Rank	Civilian: Amount (1)	Civilian: Rank	Civilian: Percent (2)	Contract and Charter: Military: Rank	Military: Amount (3)	Military: Rank	Military: Percent (4)	Individual Sales: Rank	Individual Sales: Amount (5)	Individual Sales: Rank	Individual Sales: Percent (6)	Total: Rank	Total: Amount (7)	Total Operating Revenue 2/: Rank	Total Operating Revenue 2/: Amount (8)	Operating Profit: Rank	Operating Profit: Amount (9)	Operating Ratio: Rank	Operating Ratio: Percent (10)	Total Assets: Rank	Total Assets: Amount (11)	Net Worth: Rank	Net Worth: Amount (12)	Current Ratio: Rank	Current Ratio: Ratio (13)	Working Capital: Rank	Working Capital: Amount (14)
1961																												
Total Supplementals		7,989		13.5		42,654		71.9		8,647		14.6		59,290		62,354		1,879		96.99		27,716		1,222		0.9		(1,552)
AAXICO 6/																												
American Flyers	8	224	6	12.1	7	1,117	6	60.3	5	511	6	27.6	7	1,852	7	1,868	9	17	10	99.09	10	410	9	(45)	9	0.4	8	(146)
Capitol Airways	1	3,458	2	24.5	2	10,244	4	72.6	6	408	9	2.9	1	14,110	1	14,319	2	378	7	97.36	4	2,876	2	981	5	1.0	6	(60)
Johnson Flying Service	6	295	1	100.0									11	295	9	1,657	4	275	1	83.40	8	1,021	3	498	2	1.4	3	174
Modern Air Transport	9	105	4	23.5	9	40	9	8.9	7	302	2	67.6	10	447	11	448	11	(137)	12	130.58	11	312	8	(38)	9	0.4	9	(197)
Overseas National	5	327	10	4.6	4	6,821	1	94.9	10	36	8	5.0	4	7,184	4	7,967	12	(595)	11	107.47	6	1,963	11	(887)	6	0.8	10	(374)
Purdue Aeronautics 5/																												
Roberts Vance 3/	12	7	1	100.0									12	7	12	7	10	1	2	85.72	12	42	6	41	1	3.0	5	2
Saturn Airways	4	388	3	23.7	8	621	8	38.0	4	627	4	38.3	8	1,636	8	1,675	8	26	9	98.45	7	1,037	7	(35)	10	0.1	11	(650)
Southern Air Transport	3	425	7	11.5	5	3,060	2	82.2	8	236	7	6.3	6	3,721	6	4,229	5	216	4	94.89	5	2,247	5	128	4	1.2	4	108
Standard Airways	10	95	8	6.8	10	21	10	1.5	3	1,277	1	91.7	9	1,393	10	1,407	7	49	5	96.52	9	1,020	4	164	7	0.7	7	(137)
TIA	7	237	9	5.6	6	2,355	7	55.5	2	1,650	3	38.9	5	4,242	5	3,180	6	79	8	98.15	1	6,550	10	(201)	4	1.2	2	279
USOA	11	93	11	0.9	3	7,252	5	66.8	1	3,505	5	32.3	3	10,850	3	10,869	3	309	6	97.16	3	4,109	12	(1,074)	8	0.5	12	(1,268)
World Airways	2	2,335	5	17.2	1	11,123	3	82.1	9	95	10	0.7	2	13,553	2	13,628	1	1,261	3	90.75	2	6,129	1	1,690	3	1.3	1	717
Zantop Air Transport 4/																												

1/ Sources of data: Columns 1, 3, 5, 8, and 9: CAB-BAS Air Carrier Analytical Charts and Summaries for fiscal year 1961. Columns 11 through 14: Analyses of CAB Form 242 for fiscal year 1961.
2/ Two classifications of revenue have been omitted: (a) A miscellaneous column of other transport revenue, (b) A column of non-transport revenue.
3/ Interim operating authority granted 12/17/60.
4/ Carrier inaugurated supplemental operations 6/8/62.
5/ Carrier inaugurated supplemental operations 12/7/61.
6/ Carrier not operating as supplemental during fiscal 1961.

COMPARATIVE ANALYSIS OF THE PERFORMANCE AND GROWTH
OF SUPPLEMENTAL CARRIERS WITHIN THE INDUSTRY
(DOLLARS IN MILLIONS)
(FOR FISCAL YEARS ENDED SEPTEMBER 30)

	Total Industry 1/	Total Certificated Route Carriers 2/	15 Supplemental Carriers Analyzed 2/
Operating Revenue			
1964	4,144	4,041	103
1963	3,668	3,570	98
1962	3,362	3,284	78
1961	2,980	2,918	62
Distribution of Market			
1964	100%	97.5	2.5
1963	100	97.3	2.7
1962	100	97.7	2.3
1961	100	97.9	2.1
Percent of Growth over 1961			
1964	39.1	38.5	66.1
1963	23.1	22.3	58.1
1962	12.8	12.5	25.8
Operating Profits			
1964	363	350	13
1963	171	166	5
1962	49	44	5
1961	(14)	(16)	2
Distribution of Operating Profits			
1964	100%	96.4	3.6
1963	100	97.1	2.9
1962	100	89.8	10.2
1961	100	(100.0)	100.0
Percent of Growth over 1961			
1964	226.3	228.8	550.0
1963	132.1	113.8	150.0
1962	45.0	37.5	150.0

1/ Equal to certificated carriers plus 15 supplementals. For this statistical purpose, the figures excluded amounts related to supplemental drop-outs during the four year period.

2/ Source of amounts: 15 supplemental carriers: Appendix C. Certificated carriers: CAB-BAS, Air Carrier Financial Statistics. Subsidy payments air excluded for this statistical purpose.

APPENDIX D

APPENDIX E

IMPACT OF DOD 30-70 PERCENT RULE ON REVENUE
STRUCTURE OF SUPPLEMENTAL CARRIERS WITH LONG TERM
MILITARY CONTRACTS BASED ON YEAR ENDED SEPTEMBER 30, 1964
(DOLLARS IN THOUSANDS)

1964 Revenue Structure 1/	Total Operating Revenue (1)	Individual Sales (2)	Operating Revenue Less Ind. Sales (3)	Actual Revenue Commercial 2/ (4)	Actual Revenue Military (5)
AAXICO	8,733		8,733	186	8,547
Capitol Airways	17,933	295	17,638	6,501	11,137
Southern	5,736	186	5,550	1,269	4,281
TIA	13,155		13,155	2,268	10,887
World Airways	24,913		24,913	2,751	22,162
Zantop	16,837		16,837	7,808	9,029
Total	87,307	481	86,826	20,783	66,043
AAXICO and Saturn Combined	13,437	21	13,416	3,649	9,767

Based on Commercial Revenue

	30% Commercial Limit Based on Operating Revenue Less Ind. Sales Amount	Short	% Short	Constructive Revenue Based on Commercial Revenue as 30% Total (100%)	Commercial (30%)	Military (70%)	Military Excess Amount	% Excess
AAXICO	2,620	2,434	1,309	620	186	434	8,113	95
Capitol Airways	5,291	(1,210)	(19)	21,670	6,501	15,169	(4,032)	(36)
Southern	1,665	396	31	4,230	1,269	2,961	1,320	31
TIA	3,947	1,679	74	7,560	2,268	5,292	5,595	51
World Airways	7,474	4,723	172	9,170	2,751	6,419	15,743	71
Zantop	5,051	(2,757)	(35)	26,027	7,808	18,219	(9,190)	(102)
Total	26,048	5,265	25	69,277	20,783	48,494	17,549	27
AAXICO and Saturn Combined	4,025	376	10	12,163	3,649	8,514	1,253	13

Based on Military Revenue

	70% Military Limit Based on Operating Revenue Less Ind. Sales Amount	Excess	% Excess	Constructive Revenue Based on Military Revenue as 70% Total (100%)	Military (70%)	Commercial (30%)	Commerical Shortage Amount	% Short
AAXICO	6,113	2,434	28	12,210	8,547	3,663	3,477	1,869
Capitol Airways	12,347	(1,210)	(11)	15,910	11,137	4,773	(1,728)	(27)
Southern	3,885	396	9	6,116	4,281	1,835	566	45
TIA	9,208	1,679	15	15,553	10,887	4,666	2,398	106
World Airways	17,439	4,723	21	31,660	22,162	9,498	6,747	245
Zantop	11,786	(2,757)	(31)	12,899	9,029	3,870	(3,938)	(50)
Total	60,778	5,265	8	94,348	66,043	28,305	7,522	36
AAXICO and Saturn Combined	9,391	376	4	13,953	9,767	4,186	537	15

1/ Source: Actual dollar amounts are those in Appendix C. Others are derived.
2/ Equals column 3 less column 5.

APPENDIX F

RECOMMENDED REGULATION CHANGES

The various regulation changes recommended and the reasons for them are considered in detail in the text (pages 117-136). In general, they contemplate expanding and recodifying Part 208 into Subparts A and B, Subpart A to set forth general provisions applicable to all supplemental air carriers and Subpart B to include the special rules governing particular types of charter authority of the supplementals.[1] The certificates of the supplemental air carriers can be simplified appreciably by incorporating some of the general provisions now found in the interim certificates into Subpart A; and Subpart B should be modeled substantially after Part 295 and the proposed Part 378 concerning all-expense tour charters, with appropriate formal and substantive changes.

Part 207

With all supplemental air transportation subject to the provisions of Part 295 or new Part 208, Part 207 would no longer govern charter flights by the supplementals and should be amended accordingly.

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[1] Subpart B of the new Part 208 would be applicable to supplemental air transportation other than transatlantic supplemental air transportation. The latter would continue to be subject to the provisions of Part 295 until such time as one set of regulations can be promulgated to govern all supplemental air transportation.

Part 208

Subpart A—This subpart, entitled "General Provisions," should consist of the existing provisions of Part 208 with the following changes, additions, and amendments:

1. *Applicability* (208 3)—amend to delete references to Public Law 87-528. It should be made clear that Subpart A contains the terms, conditions, and limitations of general applicability to all supplemental air transportation, while Subpart B contains the special rules applicable to the various kinds of charter services falling within the scope of supplemental air transportation (except transatlantic supplemental air transportation).

2. *Definitions* (208 3)

(a) amend the existing definition of "supplemental air carrier" to delete references to Public Law 87-528.

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(b) incorporate without change from the interim certificates the definitions of "point," "agreement," "cargo agent," "flight," and "ticket agent."

(c) add without change from Part 295 the definitions of "pro rata charter," "single entity charter," "mixed charter," "person," "travel agent," "charter group," "charter organization," "immediate family," and "solicitation of the general public."

(d) add from Part 295 with the changes indicated:

(i) "bona fide members," with deletion of so much of the present provision (section 295.2

(10231)

(k)) as provides "and unless they have actually been members for a minimum period of six months prior to the starting flight date."

(ii) substitute a definition of "supplemental air transportation" for "transatlantic supplemental air transportation" now in Part 295 so as to encompass geographically all interstate, overseas, and foreign supplemental air transportation except transatlantic supplemental air transportation.

(iii) the definition of "charter flight" (section 295.2(b)), changed so as to be applicable generally to persons and property and to

(a) incorporate new provisos (i), (ii), and (iii), and (iv) under section 295.2(b)(1)[2] and

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[2] The new provisos would read as follows:

(i) by a person for his own use (including a direct air carrier when such aircraft is engaged solely for the transportation of company personnel or company property, or in cases of emergency, of commercial traffic);

(ii) by a person (no part of whose business is the formation of groups or the consolidation of shipments for transportation or the solicitation or sale of transportation services) for the transportation of a group of persons and/or their property, as agent or representative of such group;

(iii) by two or more persons acting jointly for the transportation of themselves and/or their property or a group of persons and/or their property;

(iv) by an indirect air carrier authorized by the Board to charter aircraft from an indirect air carrier.

These provisos are a combination of those now in the interim certificates and the definition in Part 295. Proviso (iv) has been broadened to assure that it encompasses all-expense tour charters by tour operators where authorized by the Board.

(b) amend existing section 295.2(b)(2) to permit split charters (except on charters for property movements or to indirect air carriers) of up to three groups per aircraft provided that each group shall consist of 40 or more passengers.

(e) incorporate without change from proposed Part 378 the definitions of "all-expense tour group," "tour operator," "tour participant," and "tour price."

(f) add from proposed Part 378 with the changes indicated

(i) "all-expense tour charter," amended to have geographical application to interstate, overseas, and foreign air transportation except transatlantic supplemental air transportation.

(ii) "all-expense tour" changed to provide

(1) a minimum tour duration of seven days,

(2) a minimum requirement for two destination cities,

(3) a change in the price provision so that the charge to the passenger shall be no less than 110 percent of the lowest basic fare or fares (provided that the ground elements of the tour shall in no event cost less than $15 per passenger), and

(4) the one-group, one-aircraft rule is modified to provide that where the aircraft

is being operated under one charter to one tour operator a maximum of three groups, each group to consist of 40 or more passengers, may be transported aboard the same aircraft.

(g) add the definition of "substitute service" from Order E-20522, February 28, 1964.

(h) add a new definition of "indirect air carrier" so that the term shall mean any citizen of the United States who engages indirectly in air transportation, including airfreight forwarders and tour operators.

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3. Except for minor language changes of an editorial nature, the balance of the present provisions of Part 208 can be adapted in their present form to the new Subpart A, with the following recommended changes:[3]

(a) the addition of the provisions of general application now in the interim certificates concerning written agreements with ticket agents, the use of their certificated names by supplementals, and transfers of control. See *e.g.*, paragraphs (1), (2), and (3) of Part IV of World's interim certificate issued pursuant to Order E-21304, September 21, 1964.

(b) combine sections 295.13 and 295.14(a) and (b) into a new section "Tariffs and Terms of Service" to be included in Part 208 and amended to reflect

[3] The liability insurance requirements recently were amended by ER-441 adopted July 30, 1965 (amendment no. 3 to Part 208).

the liberalization of split charter authority with respect to traditional passenger charters.

(c) combine the requirements of sections 295.14(1) and (2) with those of section 208.20 into a new section for Part 208 entitled "Flight Delays and Substitute Air Transportation," with the amendment noted in (b) above and a separation of the provisions to indicate which apply to interstate and overseas supplemental air transportation, on the one hand, and foreign air transportation, on the other hand.

(d) incorporate into new Subpart A of Part 208 the provisions of present Subpart D of Part 295 (section 295.60) concerning advisory opinions so that they would be generally applicable to all types of charters.

(e) the addition from Part 295 to Subpart A of the provisions concerning waivers (section 295.3), separability (section 295.4), and records and record retention (section 295.5), with any necessary changes to reflect the prior approval procedure applicable to all-expense tour charters.

(f) combine as a single provision entitled "Payments, Gratuities, and Donations" in new Subpart A the present sections 295.16 and 295.21 and amend them so as to prohibit specifically donations to charter organizations and individual charter participants.

(g) delete section 208.30 from Subpart A for inclusion in Subpart B.[4]

Subpart B. This subpart, entitled "Charter Services," would set forth the special rules applicable to the various kinds of charters falling within the classification of supplemental air transportation, *i.e.*, military charters, pro rata charters, single entity charters, mixed charters, and all-expense tour charters. As the result of the changes previously recommended some of the provisions now appearing under the various headings of Part 295 would be removed to Subpart A of Part 208 because of their general application to all charter services. Also, most provisions of Part 295 subsequently suggested for incorporation in Subpart B need editorial changes to correct intra-paragraph references from sections of Part 295 to the applicable new provisions of Part 208, to eliminate references to transatlantic supplemental air transportation, etc., and changes of this nature will not be specifically discussed.

Military Charters. This heading would include only the present section 208.30 with the deletion of references to Public Law 87-528 and an amendment to incorporate the provisions concerning "substitute service" placed in the interim certificates of the supplementals by Order E-20522, February 28, 1964.

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[4] The Bureau has also suggested that Part 208 should include provisions concerning continuing fitness and modifications, suspension, or revocation of certificates, substantially in the form that these matters are dealt with in the statute and in the interim certificates of the supplementals. However, as the result of this proceeding the supplementals will be operating under the Act rather than Public Law 87-528, and provisions that do no more than parrot the statutory language are superfluous.

Pro Rata Charters. Remaining provisions of Part 295 for incorporation under this heading are sections 11, 12, and 15 (requirements relating to air carriers), 20 and 22 (requirements relating to travel agents), and 30 to 36 inclusive (requirements relating to the chartering organization). The following changes and amendments are indicated:

1. sections 295.30 and 295.31 should be amended to make it clear that solicitation of, as well as participation by, members of an organization with respect to charter flights shall extend only to the organization, or the particular chapter or unit thereof, which signs the charter agreement with the air carrier as the charterer.

2. eliminate in section 295.35(b)(1), and in the note following section 295.35(d), the references to the six months' rule.

10235

Single Entity Charters. As appears in the present sections 39-42 of Part 295, there should be appropriate references back to prior provisions as well as retention of the requirement concerning commissions paid to travel agents (295.42).

Mixed Charters. The rules governing pro rata charters would be applicable to mixed charters, as is now the case in Part 295 (295.50).

All-Expense Tour Charters. Regulations pertaining to all-expense tour charters would be predicated on the general requirements in proposed Part 378, subject to its change from a blanket exemption regulation to one that specifies a pre-flight authorization procedure. The following changes are suggested:

(10235)

1. A provision requiring the filing of a joint application by the carrier and the tour operator for a Statement of Authorization and any necessary exemption for the tour operator authorizing the specific tour charter flight or series of flights proposed. No flights could be operated in the absence of such authorizations.

2. The application should include such information as may be required concerning the carrier, the tour operator, the tour charter arrangements and destinations, the dates of operation, equipment, price, etc. The application should (1) attach a tour prospectus for the proposed operations, (2) be filed by a prescribed date sufficiently in advance of the scheduled flight dates to allow for answers to the applications and for orderly processing, and (3) contain a showing that the carrier and the tour operator meet the general requirements of the regulation.

3. If the Board should find that the proposed flight or flights comply with the requirements of the regulation and are otherwise in the public interest, a Statement of Authorization and any necessary exemption would be issued. Any such authorizations could be withheld, conditioned, or limited by the Board as the public interest might require.

4. The conditions and limitations of proposed Part 378 would form the basis of the general requirements that all applicants would be required to meet, specifically: the requirement of a binding charter commitment (378.10); the provision for filing of a tour prospectus (378.11), modified to require that it be filed with the application; adherence to the tour prospectus (378.12) and the provisions of the Statement of Authorization and any ex-

emption issued; provisions for tariffs (378.13) and waivers (378.30) to the extent that the general provisions

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previously recommended for inclusion in Subpart A do not suffice; surety bonds (378.14); contracts by the tour operators and tour participants (378.15); post flight reporting (378.20) if deemed necessary with the change to a prior approval procedure; and enforcement (378.31). Also, the Board should reserve the rights to suspend a tour operator's exemption authority where necessary for protection of the public (378.6(b)).

Part 295

Part 295 should be amended to reflect the substantive changes made herein.

(10269)

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BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

EXCEPTIONS OF

American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., United Air Lines, Inc., Western Air Lines, Inc.

TO

EXAMINER'S INITIAL DECISION

Communications with respect to these Exceptions should be sent to:

POGUE & NEAL
1001 Connecticut Avenue, N. W.
Washington, D. C. 20036

September 7, 1965

10270

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

EXCEPTIONS OF

American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., United Air Lines, Inc., Western Air Lines, Inc.

TO

EXAMINER'S INITIAL DECISION

The Initial Decision of Examiner Robert L. Park was served in the above-captioned proceeding on August 27, 1965. The Trunkline Intervenors, in accordance with the provisions of Rule 30 of the Board's Rules of Practice, file the following exceptions to the ultimate conclusions of said decision:

1. Exception is taken to the finding of the Examiner that the Board has the statutory authority under the Federal Aviation Act of 1958, as amended, to authorize supplemental air carriers to provide all-expense tour charters to tour operators. All-expense tour charters are not "charter trips in air transportation"; do not "supplement" the

scheduled service of scheduled carriers; and may not be authorized on the basis of a record devoid of evidence as

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to how, when, or where they will be performed, presented by travel agents as the real principals in such a service, and necessary for required statutory findings under Section 102(b) and (d) of the Act.

2. Exception is taken to the finding of the Examiner that the public convenience and necessity requires the authorization of supplemental air carriers to provide all-expense tour charters to tour operators.

3. Exception is taken to the finding of the Examiner that the public convenience and necessity requires the authorization of supplemental air carriers to provide split charters.

4. Exception is taken to the finding of the Examiner that the public convenience and necessity requires the authorization of any supplemental air transportation other than within the continental United States and to transborder points.

5. Exception is taken to the finding of the Examiner that the applicants for whom he has recommended certification to provide supplemental air transportation other than within the Continental United States and to transborder points, are fit, willing, and able to provide such service.

6. Exception is taken in the following respects to the finding of the Examiner that the public interest requires the Economic Regulations governing the regulation of planeload charters to be revised, supplemented and reissued in accordance with recommendations set forth in

Appendix F to his Decision: (a) the failure of the Examiner to include provisions therein prohibiting all of the objectional practices contained in the letter of J. G. Adams, then Director, Bureau of Enforcement, December 11, 1964, introduced in the record as JI-1158; (b) the recommended elimination of the six months membership rule; (c) the recommended provision for split charters; (d) the recommended provision for charters to freight forwarders.

10272

7. Exception is taken to the finding of the Examiner that the Economic Regulations should be revised, supplemented, and reissued in accordance with recommendations set forth in Appendix F to his Decision by the adoption of a modified Part 378 of the Board's Regulations proposed in Docket 15777 and relating to all expense tour charters by supplemental air carriers and tour operators, as a "... temporary expedient to permit prompt implementation of the new authority recommended." (RD 119) Reliance on any part of that Docket, not consolidated herein nor subject to cross-examination by the Intervenors, either to decide the need for, or regulations surrounding, any all expense tour charter experiment, constitutes a violation of the Administrative Procedure Act, particularly Section 7(d) thereof; is arbitrary, capricious, and an abuse of discretion; and deprives the Intervenors of due process under the Fifth Amendment of the Constitution of the United States. Further, and assuming *arguendo* the validity of such reliance, the Examiner's recommended all expense tour charter recommendations are inadequate to prevent a service substantially identical to individually ticketed service and to minimize diversion from the Intervenors, particularly

with respect to the provisions for the duration and stop requirements to be imposed, the number of groups that could be transported on a single aircraft, the price to be charged the passenger, and the provision for "waivers".

10273

The Trunkline Intervenors will file a brief in support of the above exceptions. Oral Argument is requested.

Respectfully submitted,

POGUE & NEAL

By: /s/ JAMES F. BELL
Attorneys for
American Airlines, Inc.
Braniff Airways, Inc.
Continental Air Lines, Inc.
Delta Air Lines, Inc.
Eastern Air Lines, Inc.
National Airlines, Inc.
Northwest Airlines, Inc.
Pan American World Airways, Inc.
Trans World Airlines, Inc.
United Air Lines, Inc.
Western Air Lines, Inc.

September 7, 1965

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been served this date upon all parties to this proceeding as required by the Board's rules.

/s/ BRIAN C. ELMER
Brian C. Elmer

September 7, 1965

10878

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Docket No. 13795, *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

BRIEF TO THE BOARD OF THE JOINT INTERVENORS:

American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc.

POGUE & NEAL

1001 Connecticut Avenue, N.W.

Washington, D. C. 20036

September 27, 1965

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BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Docket 13795, *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

ANSWER OF JOINT INTERVENORS TO MOTION OF OVERSEAS NATIONAL AIRWAYS, INC. TO REOPEN THE RECORD AND FOR OTHER RELIEF

Now come the Joint Intervenors[1] to answer, and oppose, the motion of Overseas National Airways, Inc. (ONA) to reopen the record in the above-captioned proceeding or, alternatively, for certain other specified relief. In support whereof, the Joint Intervenors respectfully submit the following:

1. *Motion to reopen the record.* ONA asks the Board for permission to reopen the record in this proceeding in order to receive new evidence of ONA's fitness presented in the *Reopened Transatlantic Charter Investigation*, Docket 11908, *et al.* ONA asserts that the reopened hear-

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[1] American Airlines, Inc., Braniff International, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc.

ing necessary to consider these matters would be "limited" and "should evoke little cross-examination".

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11277

2. *Motion to take official notice.* ONA has requested the Board to take official notice of a selected group of Form 41 filings, a certain lease agreement, "and/or (iii) evidence of ONA's fitness presented in the *Reopened Transatlantic Charter Investigation,* Docket 11908, *et al.* . . .". *This* request suffers from the same disability as the request to reopen the record, and is clearly violative of the Board's Rules of Practice. The latter two items are not documents subject to "official notice" under Rule 24(m)(1), and therefore, are subject to Rule 24(j) requiring consent of the parties before they can be considered a part of the record. Whereas Form 41 Reports are listed in Rule 24(m)(1), official notice for the purposes sought by ONA is clearly inappropriate in accordance with Rule 24(m)(2) and Section 7(d) of the Administrative Procedure Act, 5 U. S. C. 1006(d).

In essence, ONA's request for "official notice" is simply a request for consideration by the Board of the fitness evidence submitted by ONA in Docket 11908. Nine of the eleven Joint Intervenors, and their counsel, did *not* participate in that proceeding. It is, therefore, difficult to understand ONA's claim that "no party to this proceeding could show that the use of such evidence would result in substantial prejudice". It would be patent legal error for the Board to rely upon evidence in *another* proceeding to which intervenors in this case were *not* parties and upon which they did not have the opportunity to cross examine.

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(11359, 11445)

11359

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Docket Nos. 11908, *et al.*, and 13795, *et al.*

In the Matter of:

REOPENED TRANSATLANTIC CHARTER INVESTIGATION AND SUPPLEMENTAL AIR SERVICE PROCEEDING

ORAL ARGUMENT

Volume 1 — Place Washington, D. C.

Pages 1 thru 180 — Date October 13, 1965

11445

* * * * *

VICE CHAIRMAN MURPHY: Mr. Bell?

ARGUMENT OF JAMES BELL, ON BEHALF OF OPPONENTS

MR. BELL: May it please the Board, Mr. Chairman, as you know I am representing the eleven joint line trunk intervenors in this proceeding, and in the interest of a unified presentation, however, most of the other intervenors have conceded their time to me. So that I will in effect, with one other exception, be in the supplemental case the opponent of the all-expense tour charter concept.

* * * * *

(11446, 11500, 11501)

11446

* * * * *

MR. BELL: * * * And this time the question is whether the supplemental should be permitted to charter aircraft to tour operators who in turn would sell individually ticketed service directly to the general public as part of an all-expense tour.

* * * * *

11500

* * * * *

MR. BELL: * * * Gentlemen, the all expense tour charter program is superficially very appealing, I agree. It appears to do something for everybody. But when it is dissected in the light of history, it proves to be one of the most disastrous programs ever advanced in the history of air transportation. It is unlawful, it is contrary to the public interest, it is unneeded, it is detrimental to the development of air transportation, it is administratively unenforceable, and it is supported by ephemeral arguments which fade away in the light of fact.

Are there any questions, sir?

VICE CHAIRMAN MURPHY: No. We thank you very much, Mr. Bell.

* * * * *

11501

* * * * *

ARGUMENT OF JERRY W. RYAN ON BEHALF OF PAN AMERICAN WORLD AIRWAYS SYSTEM

MR. RYAN: Mr. Chairman, Members of the Board, there has been today considerable difficulty in your knowing or

counsel knowing to which case comments have been directed insofar as the applicants are concerned. I think it is well nigh impossible to sort out which of those comments belong to which case.

I would like to try to avoid that by saying that Mr. Bell has commented primarily on the problems in the Supplemental Air Service Case. Although I would also say that his legal arguments as to the power of this Board to authorize all-expense tour charters obviously apply in the Transatlantic Case as well as the Supplemental Case, and I will not burden you further with remarks to that subject.

* * * * *

11503

* * * * * *

MR. RYAN: * * * First, I would discuss the Docket 11908 procedural questions raised by Board Order E-22686.

As you know, both Pan American and Trans World Airlines have a most substantial interest in that docket because the Transatlantic is a prime market for both of those carriers. Both of them, Pan American and TWA, have participated in every phase of that case.

I would say that counsel for TWA is not arguing before you today only because of the limited time available and since the interests of it and Pan American are essentially identical it seemed appropriate for one person rather than two to argue the matter here. I say this so you will understand that both carriers have the deepest interest in that matter now before the Board.

In my use of the phrase "now before the Board" it is not a concession to what some of the parties suggest is in fact before you. Preliminarily I would point out that cer-

tain briefs filed for this occasion purport to present to you evidence extractive from the Supplemental Case for your use in deciding the All-Expense Tour Case in the Transatlantic area.

That was not your order. We are rather to argue whether such a procedure would be permissible and reasonable before the Board.

11504

In the first proceeding, in the first phase of this case, the Board affirmed the Examiner's recommendation denying applications for authority to charter the travel agents for the operation of all-expense tours. And the denial like the grant of the split-charter authority is not contained physically within the piece of paper called the certificate. Rather it is contained in the Board's newly revised Part 295 which, along with the certificates and the Board's opinion dealing with the entire case, went to the President. The President returned the Board's opinion endorsing it as approved.

Thereupon the Board announced the President had acted on all aspects of the Board's decision save the ONA application and its financial fitness and thus in issuing its decision the Board said:

> "The only matter remaining to be disposed of is the importance of the President's directive returning the proceeding to the Board for further evaluation as to ONA."

The Board at the time of its decision was not alone in that belief. Petitions for reconsideration were addressed

to the denial of all-expense tour authority by both Saturn and Capitol, for example, and those carriers by their petitions sought a change in the Board's decision.

Today I think they have affirmed in their documents the same view, that there is a decision to be reconsidered in the Transatlantic Case and not unfinished business yet

11505

to be decided for the first time.

Suddenly, then, on April 30, 1964, the Board issued another Order E-20776, which I think surprised all of the parties. There, for the first time, it said that the President had not taken final action on the Board's recommendation not to grant any applicant all-expense tour authority.

This after-thought order seems to make no more sense now.

As the Board is aware, judicial review of split-charter grant was sought and obtained.

Counsel for the Board there in the Court of Appeals argued and argued successfully that the President had in fact approved the definition of charter contained only in 295, and the Court agreed saying:

> "We have considered the contention that the President has not actually approved the split-charter concept, and we find it without merit."

This position and the after-thought position of the Board that the President did not act on the all-expense tour issue are logically irreconcilable. The President neither said,

(11505, 11506)

"I approve Part 295," or "I disapprove Part 295 of any part of it in any specific language."

The finding of approval of split charters can only rest on what was in fact Presidential silence and the impossible position of the Board must be that the President by

11506

silence affirmatively acted on the split-charter issue and that simultaneously the President withheld action by the same silence on another aspect of the same piece of paper before it.

Rather than belabor that point, I would suggest there is available a very simple course of action. The Board is entitled to and the Board should ask the President what in fact he did intend. A simple exchange of correspondence will resolve that matter and we would then clear up this procedural cloud as to whether there is in fact a final decision and whether or not the President did in fact act.

So where does the Board now stand? It has before it petitions for reconsideration requesting that the Board change its mind and reach a conclusion from that originally adopted by the President or different from the view already approved by him.

This brings me to the first of the questions raised by the Board for comment at this time: Is the present record adequate for determining the all-expense tour issue in Docket 11908, and I mean the record in Docket 11908?

The present record certainly was adequate for the Board when it determined the all-expense tour issue in its decision approved by the President and presumably as a mat-

ter of power the Board is entitled to act now on the petitions and the answers thereto, to review its decisions and act again on the question.

* * * * *

11666

ARGUMENT OF JAMES BELL ON BEHALF OF TRUNKLINE CARRIERS

* * * * *

MR. BELL: * * * Charter service is not the primary function of the domestic trunkline carriers. That primary function is to provide scheduled air transportation, and the trunklines therefore accepted the 1962 delineation of the supplemental air carriers as charter specialists designed to supplement the scheduled service provided by the trunkline carriers.

* * * * *

(11734)

11734

E-23350

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

Decided: March 11, 1966

Certificates issued to American Flyers Airline Corp., Capitol Airways, Johnson Flying Service, Modern Air Transport, Purdue Aeronautics Corp., Saturn Airways, Southern Air Transport, Trans International Airlines, World Airways, and Zantop Air Transport authorizing civil and military charters of persons and property between the 50 States of the United States and the District of Columbia, subject to certain conditions.

Decision deferred as to applications of Overseas National Airlines, Standard Airways, and Vance International Airways for further hearing on qualifications.

New Part 378 of the Special Regulations, which grants indirect air carrier authority to tour operators and sets forth the provisions governing the conduct of inclusive tour charters by the tour operators and the supplemental air carriers, being concurrently adopted and issued by the Board.

Part 208 of the Economic Regulations revised and reissued so as to incorporate therein new definition of charter

flight to allow the engagement by the chartering organization of one-third capacity of an aircraft for the movement of passengers on a time, mileage, or trip basis and to set forth therein terms, conditions, and limitations governing the operations of the supplemental air carriers being issued certificates under section 401(d)(3) of the Act.

Except for inclusive tour charters, which are authorized for a five-year period, certificates are being issued for an indefinite period.

11735

Decision as to all applicants with respect to overseas and foreign aspects of supplemental air transportation withheld until action under section 801 of the Act.

APPEARANCES:

Same as in examiner's decision and, in addition, the following:

Berl I. Bernhard for Allegheny Airlines, Bonanza Air Lines, Hawaiian Air Lines, Lake Central Airlines, Ozark Air Lines, Pacific Airlines, Piedmont Aviation, Southern Airways, and Trans-Texas Airways.

Richard D. Neumann for Holiday Airways.

Howard Boros for Overseas National Airways.

R. P. Smith for Purdue Aeronautics Corporation.

Judah Best and *Martin L. Friedman* for United States Overseas Airlines.

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OPINION

BY THE BOARD:

This is a consolidated proceeding on the applications of seventeen applicants seeking certificates of public convenience and necessity under section 401(d)(3) of the Act to engage in supplemental air transportation.[1]

The applications consolidated and heard in the proceeding request authority to operate both domestically and in the overseas and foreign fields. This opinion deals only with the domestic issues. Under the provisions of section 801 of the Act, our disposition of the requests for overseas and foreign authority is subject to the approval of the President and will therefore be the subject of a separate opinion.

Following public hearings, Examiner Robert L. Park issued his recommended decision. On the domestic issues, the examiner found that (1) all qualified applicants should be issued certificates authorizing them to operate civil and military charters with respect to persons and property between the fifty states; (2) the authority should include the right to provide split charters and inclusive tour charters,[2]

---

[1] American Flyers Airline Corp., Capitol Airways, Inc., Conner Air Lines, Inc., Holiday Airways, Inc., Johnson Flying Service, Inc., Modern Air Transport, Inc., Overseas National Airways, Inc., Purdue Aeronautics Corp., Saturn Airways, Inc., Southern Air Transport, Inc., Standard Airways, Inc., Stewart Air Service, Trans International Airlines, Inc., United States Overseas Airlines, Inc., Vance International Airways, Inc., World Airways, Inc., and Zantop Air Transport, Inc.

[2] Although the applicants and the examiner generally used the term "all expense tour" charter, we think the term "inclusive tour" charter is more descriptive of the service, and will so designate it.

in addition to charters as traditionally defined; (3) the inclusive tour authority should be of five years' duration and remaining authority of unlimited duration; (4) eleven of the applicants are fit, willing, and able[3] and six are not fit, willing, and able;[4] (5) appropriate regulations should be adopted to implement the authority being granted and prescribe the limitations thereon.

Exceptions and briefs to the Board have been filed,[5] and the Board has heard oral argument.

Upon consideration of the entire record, we find that we are in agreement with the examiner's disposition of the domestic issues with but one significant exception. We have decided that rather than finally dispose of the applications of ONA, Standard, and Vance, we should reopen the record for further hearings before the examiner on the current qualifications of the three applicants. Accordingly, except as modified herein, we adopt as our own the findings, conclusions, and recommendations of the examiner on the domestic issues contained in his decision which is attached hereto as an appendix.[6]

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[3] American Flyers, Capitol, Johnson, Modern, Purdue, Saturn, Southern, TIA, Vance, World and Zantop.

[4] Conner, Holiday, ONA, Standard, Stewart, and USOA.

[5] Exceptions and briefs were filed by American Flyers, Capitol, Conner, Holiday, Johnson, Modern, ONA, Purdue, Saturn, Southern, Standard, Stewart, TIA, Vance, World, Zantop, The Flying Tiger Line, Lake Central Airlines, Local and Short-haul Carriers, Mackey Airlines, Pan American-Grace Airways (Panagra), Trans Caribbean Airways, and the Trunkline intervenors.

[6] The examiner issued a single decision covering both the domestic issues and the overseas and foreign issues. For convenience, we are attaching the examiner's decision in its entirety. We obviously do not here adopt the portions of the decision directed to matters that are subject to the approval of the President.

(11737, 11738, 11739)

Since the examiner in his thorough and carefully considered recommended decision dealt fully with the issues in the case, we will limit our opinion to certain matters raised on exceptions and our reasons for the limited reopening.

11738

Inclusive Tour Charters

A major issue in the proceeding involves the question of inclusive tour charters. These are charters to tour operators selling packaged tours to individual members of the public. As already indicated, the examiner found that such tour charters could be lawfully authorized by the Board and would meet a substantial public need for low-cost pleasure air travel. He further found that the tour authorization would economically strengthen the supplemental carriers without having a materially adverse effect on the certificated route carriers. Accordingly, he recommended the grant of such authority for a five-year period, subject, however, to a set of comprehensive regulatory provisions designed to assure that the tours would be limited to group travel, rather than individually ticketed point-to-point transportation.

We are in full agreement with these findings and conclusions and find, in the main, there is no necessity to explore them further. However, several exceptions warrant comment.

11739

Legal Issues. Under the definition of supplemental air transportation in section 101(33) of the Act, we may authorize supplemental air carriers to engage solely in "char-

ter trips." The argument is made that the term "charter trip" does not include charters to tour operators acting as indirect air carriers for the purpose of transporting inclusive tour groups whose members are gathered from the general public, and that charters would be mere subterfuges for individually ticketed transportation. The argument is based primarily on the claim that, while the statute does not spell out a prohibition against inclusive tour charters, its legislative history expresses such an intention. The examiner correctly rejected this argument.

In our view, the statute on its face clearly leaves to the Board's exercise of its sound discretion the power to define the term "charter" so long as we preserve the basic distinction between group travel and individually ticketed travel. This principle was established in the *Transatlantic Charter Investigation,* Docket 11908, and we are persuaded that it governs this case as well.

In the *Transatlantic* case the Board, for the first time, authorized supplemental carriers to charter space to two groups on one aircraft.[7] This split-chartering was attacked by the certificated route carriers on the ground that the legislative history of P. L. 87-528, the Supplemental Air Carrier Act, demonstrated that Congress intended that the word "charter," as used therein, should not be expanded beyond its traditional scope. The court decisively rejected this argument, stating:

11740

"We are unable to conclude that the term 'charter trips' has a fixed meaning . . . . We conclude Congress in-

[7] Orders E-20530, 20531, issued March 3, 1964.

> tended, although not without limits, that the Board should be free to evolve a definition in relation to such variable factors as changing needs . . . . We agree with the Board that the legislative history reveals that a prime concern of Congress was to maintain the integrity of the charter concept—to preserve the distinction between group and individually ticketed travel; within these limits it is for the Board to evolve reasonable definitions." [8]

Moreover, the element of novelty, which was present in split charters, is absent here. Inclusive tour charters are well established in surface transportation, and their legality has long since been settled, as against contentions that they are mere subterfuges for individually ticketed transportation. The question arose in the leading case of *Tauck Tours*, and involved the issue of whether the Interstate Commerce Commission had the power to issue a broker's license to a travel agency authorizing the travel agent to charter buses from motor carriers licensed to engage only in charter services. In its first report of the case, Division 5 of the Commission limited the broker's authority to sell individual all-expense tours to the use of motor carriers authorized to perform services on an individual-ticket basis and at individual-ticket rates, on the ground that the proposed services were not bona fide charters.[9] On reconsideration, however, Division 5 concluded that the charters were lawful. It recognized that a motor carrier whose authority

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[8] *American Airlines, Inc., et al.* v. *C. A. B.*, 348 F. 2nd 349, 354 (C. A. D. C., 1965).

[9] *Tauck Tours, Inc., Extension—New York, N. Y.*, 49 M. C. C. 491 (1949).

was limited to charter services could not perform individually ticketed services "through the subterfuge of a broker

11741

selling tickets to a number of persons who purchase individual transportation between two points." [10] Such a group would not constitute a bona fide charter party since "there does not exist any community of interest among these persons other than a desire for transportation between identical points." [11] However, a group of individuals participating in an all-expense tour venture

> "have more than just a mere desire to travel between the same points. They are participants in a group which will maintain its identity for some predetermined period of time, be under the direction of a guide, and enjoy substantially identical accommodations and experiences. Upon further consideration we are convinced that individuals by agreeing to become group members for the sake of group advantages, achieve a degree of cohesiveness such that, even though the group was organized by applicant, it is entitled through applicant as its agent to deal with the carriers as a group and to buy charter service for the group from the carriers . . . ." [12]

Division 5's report was affirmed by the full Commission applying substantially the same reasoning.

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[10] 52 M. C. C. 373, 376 (1951).

[11] *Ibid.*

[12] *Ibid.*

A three-judge Federal District Court affirmed the Commission's conclusion. In the court's view "a good deal more than bare individual transportation is involved. The tour is attractive because it is a group adventure . . . . The important thing is that the Tauck group is a cohesive whole interested in a tour for pleasure, and not in mere trans-

portation."[13] This conclusion was affirmed by the U. S. Supreme Court.[14]

Thus, inclusive tour charters are supported by precedent and practice in the field of surface transportation. It is true that the Board has not hitherto authorized inclusive tour charters in air transportation, but our determinations not to do so have been clearly based on policy rather than legal grounds. On the other hand, the Board has not required "affinity" of a group before it may itself apply for charter transportation.[15] And, in the cargo field, it has allowed freight forwarders to charter aircraft for transportation of consolidated cargo, against the claim of some parties that this policy was inconsistent with the Board's policy of prohibiting agent-assembled passenger charters.[16]

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[13] *National Bus Traffic Assn.* v. *United States,* 143 F. Supp. 689, 696-7 (D. C. N. J., 1956). It is true that the court relied in part on the fact that all-expense tour charters were long established in the motor carrier field and upon the absence of any legislative history evidencing an intention to prohibit them. However, we agree with the examiner's reading of the decision that these factors were not decisive considerations.

[14] 352 U. S. 1020 (1957).

[15] See, for example, *Pan Am. World Airways, et al., IATA Agreements,* 23 C. A. B. 275, 280-281 (1956); *IATA Agreements, Group Excursion Fares,* 26 C. A. B. 755, 756 (1958).

[16] *International Airfreight Forwarder Investigation,* 27 C. A. B. 658, 668-669 (1958).

But it is argued that all of the foregoing is overridden by legislative history. It is suggested that because the Senate bill specifically authorized inclusive tours, whereas the version ultimately enacted was silent on the matter, Congress intended to prohibit such tours. On the contrary, this sequence of events simply demonstrates that Congress intended not to freeze the definition, but to leave the question open for the Board to determine as a regulatory mat-

ter. This conclusion is reinforced by a closer analysis of the legislative history.

During the hearings on the bills, there was a great deal of testimony relating to the Board's regulations defining charters as restricted to "homogeneous" groups.[17] The supplementals felt that the term "charter" should be defined so as to compel the Board to liberalize its regulations and allow them to carry inclusive tours as charters. S. 1969, as reported to the Senate on August 8, 1961, defined charters so as to include specifically a charter to a person who offers all-expense tours to the public.[18] The Senate Commerce

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[17] Hearings before Subcommittee of Commerce Committee on H. R. 7318, H. R. 7512, and H. R. 7679, 87th Cong., 1st Sess. 80, 189, 231 (June 20, 21, and 23, 1961). Hearings before Aviation Subcommittee of Commerce Committee on S. 1969, 87th Cong., 1st Sess. 54, 61, 98-99, 110-111, 132, 136, 143, 151, 156, 179, 186, 267 (June 26, 29, and 30, 1961).

[18] The bill contained the following definition: "'Charter service' means air transportation performed by an air carrier holding a certificate of public convenience and necessity where the entire capacity of one or more aircraft has been engaged for the movement of persons and their baggage or for the movement of property on a time, mileage, or trip basis, but shall not include transportation services offered by an air carrier to individual members of the general public or performed by an air carrier under an arrange-

Committee Report supporting this definition explained that "because the development of the charter market has been inhibited by artificial restrictions which have been imposed by Board regulations on a legal charter," the term should be defined in the statute.[19]

11744

Unlike the Senate bill, the bill passed by the House limited supplementals' certificates to "charter trips" and did not define the term (H. R. 7318, as amended, September 13, 1961). The House Committee preferred to leave the definition of charter to the Board. Its report stated:

> "The supplementals recommended that a definition of charter be written into the bill and this was given consideration by your committee. The bill passed by the Senate has such a definition.
>
> "Your committee, however, after considering the problem, came to the conclusion that under the circumstances, authority to define charter services should be left, as at present, with the Board, subject to the limitations contained in the reported bill. This is a very difficult subject and any effort to freeze a definition of charter service into law could well lead to complications." [20]

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ment with any person who provides or offers to provide transportation services to individual members of the general public, other than as a member of a group on an all-expense paid tour."

[19] S. Rep. No. 688 (Calendar No. 664), 87th Cong., 1st Sess. 13 (Aug. 8, 1961).

[20] H. Rep. No. 1177, 87th Cong., 1st Sess. 11 (Sept. 13, 1961).

The bill as reported by the Conference Committee and as enacted followed the House version and eliminated the definition of "charter service."

In short, the Senate version of the bill as well as the Senate Committee Report make clear that the Senate was dissatisfied with the Board's historic refusal to authorize inclusive tour charters. On the other hand, the House bill contained no reference one way or the other to all-expense tours, and the House Committee Report clearly indicates that this matter was to be left to the Board to determine. The ultimate adoption of the House version strongly supports a construction of the statute in line with the House Committee Report.

Thus, the clear meaning of the statute is reinforced by

the sequence of events in the Senate and the House and the authoritative Committee Reports explaining those events. Under these circumstances, there is no sound reason for attempting to analyze the statements made at the time of the passage of the bill by certain of its floor managers. This is not a situation where resort to floor debates is required to explain ambiguities in the action taken by Congress. In any event, the remarks made on the floor fall far short of a clear consensus.[21]

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[21] Only two members of Congress, both Senators, expressed anything approaching an unequivocal statement that the Board would lack legal power to authorize inclusive tour charters (Senator Scott, 108 Cong. Rec. 12284-5; and Senator Cotton, 108 Cong. Rec. 12284). Three other members of Congress, including the Chairmen of the relevant House Committee and Subcommittee, while stating opposition to the grant of inclusive tour authority by the Board, expressed no opinion as to the Board's legal authority under the bill to do so (Senator Thurmond, 108 Cong. Rec. 12285;

(11745, 11746)

Considering all of the foregoing, we are persuaded that we have the power to authorize inclusive tour charters as "charter trips" under section 101(33) provided that we preserve the basic distinction between group and individual travel.

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The route carriers further argue that even if inclusive tours were "charters" within the meaning of section 101 (33) of the Act, they still could not be authorized because of the provision of that section which requires that supplemental air carrier certificates be granted "to supplement the scheduled service authorized by certificates" issued to the route carriers under sections 401(d)(1) and (2). It is contended that inclusive tours do not "supplement" scheduled services that are now available on the scheduled carriers. We find this argument unpersuasive. Price is clearly not the sole distinguishing factor of inclusive tour charters. The use of the charter mechanism, combined with the restrictions which we are imposing by regulation, necessarily results in a service to the public which is different in significant respects from that available on scheduled services. In exchange for realizing the price savings accruing from the economies of planeload charter operations, the charter tour passenger is subjected to the rigidities of a group itinerary, must be willing to travel and share facilities with

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Representative Harris, 108 Cong. Rec. 12322; and Representative Williams, 108 Cong. Rec. 12322). Finally, Senator Monroney, the Chairman of the Aviation Subcommittee of the Senate Interstate and Foreign Commerce Committee, while not specifically addressing himself to inclusive tours, flatly stated that the matter of the definition of charter was to be left to the Board's discretion (108 Cong. Rec. 12283).

strangers, and must agree to the necessary regimentation that is entailed in group travel. Nor will he have the freedom to select from the multiple daily schedules offered by route carriers, but will be confined to predetermined departure and arrival times selected by the tour operator.[22]

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Moreover, it is clear that the specially tailored type of service to be provided is not one which could practicably be furnished by route carriers on their scheduled operations. Finally, as the examiner found, inclusive tour charters are directed at, and will generally attract, a class of traveler to air transportation not now using scheduled services. For all these reasons, we find that, no less than in the case of traditional planeload charters, inclusive tour charters are "supplemental" within the meaning of section 101(33).

We also reject the contention of the route carriers that the tours are in fact "special services" as that term is used in section 401(e)(6) of the Act and therefore beyond supplemental authority. "Charter services," including the proposed inclusive tours, involve the transportation of groups assembled by a person other than the carrier, whereas the term "special services" related to groups as-

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[22] It is argued that tour operators could in fact operate on daily schedules. However, while this is technically possible, it does not appear that operation of scheduled tour charters at high frequency levels would be economically feasible, and we do not anticipate them. High frequency scheduled services are incompatible with the close to 100 per cent load factors which the tour operator will be required to achieve in order to be able to pass on to the traveler the cost savings of planeload transportation and achieve profitable operations.

sembled by the carrier itself, a distinction which has been made both by the Board[23] and the ICC.[24]

Finally, we take note of Lake Central's claim that Purdue Aeronautics should not receive inclusive tour charter au-

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thorization inasmuch as that carrier neither requested, nor offered evidence of the need for, such authority. However, we consider Purdue's application, which requested authority to engage in "charter" as that term shall be defined in any applicable Board regulation,[25] to be sufficiently broad to encompass inclusive tour charters. In addition, the Executive Vice President of Purdue testified in favor of inclusive tour charters. In any event, our findings herein are applicable to the supplemental carriers as a class, and Lake Central has not shown that these findings, particularly in regard to the public need for inclusive tours and their economic feasibility, do not also apply to Purdue.[26]

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[23] Order E-17607, October 18, 1961.

[24] *Fordham Bus Corp.* v. *United States*, 41 F. Supp. 712, 717 (S. D. N. Y. 1941); *National Bus Traffic Association* v. *United States*, 143 F. Supp. 689, 692 (D. N. J. 1956).

[25] The majority of supplemental applications were phrased in a similar manner.

[26] The route carriers argue that, even if the Board had the power, it should not grant inclusive tour authority because the supplementals would then abandon traditional planeload charters. In this respect, they cite the conduct of various supplementals in the mid 1950's, when, it is alleged, the carriers concentrated on individually ticketed services. The argument is at best speculative. There is nothing before us to indicate that the economic necessity to maintain utilization of aircraft will not provide a powerful incentive to maximize charter revenues from all possible sources. And although it is alleged that the supplementals will prefer inclusive

Diversion from scheduled services. The examiner found that his recommended liberalized authority, including tour authority, offered no significant threat to the route carriers. In attacking these findings, the route carriers argue *inter alia*, that travel agents promoting inclusive tours will have an economic incentive to solicit travelers who would normally use the scheduled carriers.

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The specter is raised of thousands of travel agents becoming tour operators and channeling substantial amounts of their pleasure traffic to the tours in order to protect their investment in aircraft chartered from the supplemental carriers. However, there is no basis for the assumption that the typical travel agent will undertake tour operations for his own account. Organizing such tours will normally involve substantial commitments, as well as financial risks, in connection with chartering aircraft, reserving hotel space, and the like, as well as heavy marketing and promotional expenditures. In our judgment, charter tour operations will be undertaken primarily by the large or wholesale travel agents who possess the facilities and financial resources which are required in order to package and market the tours. It is not to be expected, therefore, that the bulk of the travel agents will be subject to the economic pressure of having to fill chartered aircraft. On the contrary, since the agents' commission is based on a percentage of the tour fare, the individual travel agent

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tour charters because of the assistance of the tour operator in promoting business and the lack of affinity restrictions, there is no showing that inclusive tours will be more profitable (or involve less cost) to the supplementals than traditional charters.

will have a greater incentive to sell the higher priced tour on a scheduled carrier.

It is also alleged that the examiner erred in his reliance upon the inclusive tour development in Great Britain. The examiner found that the British inclusive tours had not been shown to have resulted in any materially adverse impact on scheduled carriers. The route carriers argue that, assuming the validity of this conclusion,[27] the British

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tour program is distinguishable from the proposed tours in that (1) the British inclusive tours have concentrated on out-of-the-way resort markets not served by scheduled carriers, and (2) the tour applications are screened by the British government pursuant to a procedure whereby the diversionary impact on scheduled traffic is considered. It is, of course, true that the British tours differ from the supplemental tours in these respects. However, contrary to the characterizations by the route carriers, the examiner did not rely upon the British experience as an exact parallel to the inclusive tours proposed for U. S. supplementals. We take his finding on this point to be merely that the British experience, viewed as a whole, does not demonstrate that a limited and controlled U. S. experiment with inclusive tours will have a significant adverse impact on U. S. scheduled carriers. And we affirm that finding as one supported by the record.

In the last analysis, it is not possible to predict with any degree of certainty the actual amount of diversion from

[27] We believe the conclusion is amply supported by the examiner's findings.

scheduled services which may be occasioned by the tour operations. At this juncture, we are not persuaded that such diversion will be of sufficient consequence to overshadow the substantial public benefits which we foresee from the new class of service. Clearly there is no showing that a five-year experiment in tour operations would pose any significant threat to the continued growth and prosperity of the route carriers.

Finally, we must stress that the five-year duration of the tour authorization will provide a test period, following which we shall review the tour program to determine if it has fulfilled its promises. In the meantime, the Board's rule making powers will enable it to modify the terms and conditions governing the tour operations if that is necessary in order to protect other segments of the air transportation industry.

11751

Regulatory provisions. In conjunction with the instant decision, we are concurrently adopting Part 378 of the Board's Special Regulations,[28] which grants indirect air carrier authority to tour operators and sets forth the regulatory provisions governing the conduct of inclusive tour charters by the tour operators and the supplemental air carriers. While this regulation was originally proposed in a rule making proceeding,[29] many of its provisions were considered at length both by the parties and the examiner.

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[28] Regulation No. SPR-14, adopted March 11, 1966.

[29] Notice of Proposed Rule Making SPDR-6, January 5, 1965 (30 F. R. 281), as amended by Supplemental Notice of Proposed Rule Making SPDR-6B, October 11, 1965 (30 F. R. 13077), Docket 15777.

(11751, 11752)

In prescribing regulations which will govern the effectuation and operation of the inclusive tour program, we are faced with the problem of attempting to reconcile the two opposing theories of (1) minimum restriction in order to give the tours flexibility and marketability, and (2) maximum restriction, in order to maintain the group concept and therefore prevent the tours from being used as a subterfuge for individually ticketed transportation. We believe the provisions proposed by the examiner, with certain modifications, offer the best resolution of these conflicting considerations, and we find that with these restrictions, the tour groups will be sufficiently cohesive units so as to qualify as charter-worthy under the Act. Undoubtedly,

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experience under the regulation will indicate the need for modifications, either to prevent undue diversion from scheduled services, or to relax restrictions that may prove too onerous. Our rule making powers are ample to deal with these situations as they arise.

The keystone to Part 378 is the manner in which the individual tours or series of tours, and particularly the tour operators' participation therein, will be authorized by the Board. In contrast to the regulation as proposed, which provided that tour operators would be granted blanket exemptions from applicable provisions of Title IV of the Act, the examiner recommended a prior approval procedure under which no tour could be promoted or operated without specific and advance approval granted by the Board. The examiner recognized that the "blanket exemption" approach would minimize the administrative burdens

on the Board and would give the carriers and the tour operators the greatest degree of operating flexibility. Nonetheless, he found that such considerations are outweighed by the necessity that the Board exercise firm control over the scope and direction of the inclusive tour charter program during its initial and formative stages.

We agree with the examiner that a "prior approval" procedure is necessary, primarily because the administration of the tour program will undoubtedly involve problems which cannot be anticipated at the present time. However, inasmuch as such a procedure will impose substantial burdens on the Board as well as the carriers, and because we

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believe that its indefinite duration is unnecessary, provision in the regulation is being made for the lapse of the prior approval requirement on January 1, 1968. At such time, the Board will consider appropriate amendments in the regulatory provisions that experience in the interim period indicates are necessary to protect the public against abuses which might otherwise occur under the "blanket exemption" procedure. Of course, we reserve the right to extend the prior approval requirement should such a step be found necessary.[30]

With respect to the pricing requirement, which we believe critical to the success of the tour program, the examiner proposed that the tour price be no less than 110 per

[30] It should be emphasized that the prior approval procedure, as adopted, involves only the screening of applications in order to determine if they meet the regulatory requirements. Consequently, factors such as diversion, need, and other economic issues will not be considered.

cent of the lowest basic scheduled fare. In our view, however, pegging the minimum price to a percentage of the lowest *basic* fare will allow scheduled carriers to price the tour operator out of the market through the utilization of various promotional and excursion fares. Accordingly, we are revising the pricing provision of Part 378 to require that the minimum price be based on 110 per cent of any available scheduled fare, including promotional fares, subject to the terms and conditions applicable to such fare as set forth in the scheduled carriers' tariff.[31] We believe that such a price will enable the tour operators to assemble a package sufficiently marketable to induce them to risk chartering the aircraft and to vigorously and successfully promote the tours. On the other hand, the 10 per cent

spread between the available scheduled fare and the tour price, coupled with the other conditions adopted herein, should obviate any inducement to substitute travel on inclusive tours for point-to-point transportation.[32]

We are also revising Part 378 as proposed by the examiner to increase the number of required tour stops from

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[31] In other words, the price of a particular tour may be based on a scheduled fare only if the tour meets the conditions of that fare with respect to days of departure and return, duration of trip, etc.

[32] We have clarified the regulation by providing in effect that the minimum price shall be determined as of the date of filing the Tour Prospectus with the Board. It should also be noted that we have not adopted the proposed minimum charge of $15.00 for the ground elements of the tour. In our judgment, such a provision is meaningless in light of the requirement that the tour price include all hotel accommodations and necessary surface transportation for a minimum of seven days.

two to three. The three-stop requirement will, in our judgment, increase the emphasis on the tour aspect of the package and will provide further assurance against the tours being used as a subterfuge for individually ticketed service between the originating city and the major city of destination.

Other revisions which we are incorporating into Part 378 include the following:

a. The term "inclusive tour" has been substituted for "all-expense tour." Inclusive tour (IT) is the label currently being used to describe packaged tours both in Europe and in the United States. Moreover, the phrase "all-expense tour" can be misleading to the general public because the tour price need not include all expenses of the trip.

b. Section 378.2(b)(3) will set forth only those components which the land portion of the tours *must* include, as

a minimum, rather than listing also the land components which *may* be included. Within the category of required land components are hotel accommodations and transportation between interim stops, including transportation to and from the air and surface carrier terminals utilized at such stops.

c. Section 378.2(b)(4) will specify that the tour price shall be based on the scheduled fare over the circle route beginning and ending at the point of origin, via such points where stopovers are made. This change removes the possibility that this subsection, as phrased in the proposed

regulation,[33] could be construed to mean that the tour price would be based on the scheduled fare between the point of origin and the farthest intermediate point.

d. There is no need for the tour operator, in listing the tour price, to allocate the cost as between the air transportation and the other aspects of the tour, considering that the Board will already have the tour price, the charter cost, and the number of expected participants and seats in the aircraft. Consequently, we are striking this requirement from §378.13(e).

e. We recognize that the tour operator will be in no position at the time of filing the Tour Prospectus to ascertain the number of persons who will participate in the proposed tour. Accordingly, §378.13(f) is amended to prescribe that the "expected" number of tour participants be listed.

f. In response to the suggestion that the term "cities," as used in §378.2(b)(2), is not sufficiently broad to cover all of the possible locations at which overnight tour stops might be made, we are expanding this provision to pertain to "places."

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g. Section 378.3 has been modified so as not to relieve the tour operator of the statutory obligation to provide safe and adequate service, equipment, and facilities in connection with tours operated.[34]

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[33] In Part 378 as proposed, the tour price was based on the scheduled fare "between the point of origin and the point of destination via such points where stopovers are made."

[34] In view of this change, we do not find it necessary to impose the specific regulations requested by the Port of New York Author-

h. With respect to the "prior approval" procedure, prospective tour operators will be required to file a statement containing a detailed picture of their experience, business structure, financial condition and the like (§378.12). In addition, the regulation sets forth the factors which the Board will consider in determining whether a tour operator applicant is properly qualified to engage in inclusive tour operations (§378.11(d)).

Various parties to the rule making have proposed changes in the regulation which we believe are unwarranted. In this respect, several supplemental carriers have complained that the Tour Prospectus and post tour reporting provisions (§§378.13 and 378.20) require verified statements concerning a number of matters of which the carrier could not reasonably be expected to have firsthand knowledge. In our judgment, however, the administration and enforcement of the regulatory conditions will be considerably enhanced by imposing on the carrier the duty of taking all reasonable measures to assure itself that the charters are in compliance with the regulation.[35] Such a requirement is similar to that prescribed by Part 295 of the Board's Economic Regulations, under which supplemental carriers must warrant statements of the charterer and travel agent contained in the Statement of Supporting Information.

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ity in order to insure that the tour operators make satisfactory arrangements to meet the needs of passengers at air terminals.

[35] For the same reason, we will not adopt the suggestion of the travel agents that the tour operator, as the main party in interest, should be allowed to apply for waivers from regulatory provisions, but rather will require the supplemental carrier to be the conduit through which all waiver applications must be channeled.

Hawaii and Alaska

No party opposes the grant of authority for military charters or traditional civil charters between the 48 contiguous states.[36] The intervening trunkline and international route carriers, however, continue to oppose the grant of any civil charter authority for services to and from Hawaii and Alaska.

As to Hawaii, the intervenors argue that the establishment of reduced Hawaiian excursion fares by the scheduled carriers in November, 1963, eliminated any need that might otherwise have existed for "low cost" charter service. The supplemental carriers now hold Mainland-Hawaii authority under their interim certificates, and, as found by the examiner, their Hawaiian operations have been of significance to them. The excursion fare argument presents nothing that would lead us to a conclusion different from the examiner's even were we considering the award of only traditional charter authority. They become even less persuasive when applied to the new and broader inclusive tour charter authority we are granting.

With respect to Alaska, the intervenors contend that the examiner's generalized findings of need based on the future

[36] Flying Tiger, while apparently conceding that there may be a limited role for supplementals in the domestic charter market, contends that no need has been shown for the grant of permanent domestic cargo charter authority to all qualified applicants. However, Flying Tiger did not indicate how many carriers should be authorized to operate and did not present any evidence at the hearing showing that it would be significantly affected by continuing the domestic cargo charter authority of supplemental carriers as a class.

growth of Alaska cannot stand in the face of his own specific findings of only one supplemental charter to Alaska in 1963, of inadequate tourist facilities and high cost levels which depress tourist charters, and of the Board's own

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expression of concern over the multiplicity of the carriers in this area.[37] The arguments based on historic charter operations ignore our developmental and promotional responsibilities under the Act, and we find no reason for believing that Alaska, with its natural tourist attractions, will not in the future prove to be an attractive vacation spot for travelers from other states. The Board's concern over the multiplicity of States-Alaska carriers has been with the uneconomic nature, and high subsidy cost, of the scheduled route pattern under which four carriers were authorized to provide competitive scheduled services to Alaska.[38] Civil charters to and from Alaska have not constituted a significant part of the operations of the scheduled carriers and there is no showing that charter operations by the supplemental carriers would have any significant adverse effects upon them.

We fully agree with the examiner that there is no persuasive basis on this record for singling out our two newest states and denying them the benefits of supplemental air

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[37] Citing *Pacific-Northwest Alaska Air Service Case,* Order E-21955, March 26, 1965.

[38] Of the four carriers, only the two largest, Pan American and Northwest, are on the brief here under discussion. The two smaller carriers, Alaska Airlines and Pacific Northern did not join in that brief.

(11758, 11759)

transportation that are being made available to their sister states.[39]

11759

Qualifications of the Applicants

Conner, Holiday, and Stewart challenge the examiner's findings that they are not fit, willing and able.[40] Although each of the applicants addresses itself to its own qualifications, running through all their arguments is the common theme that the examiner applied inappropriate tests in evaluating their fitness and acted arbitrarily in finding them unfit, while finding certain of the operating carriers who are allegedly weaker from a qualification standpoint, fit. In his decision the examiner pointed out the important considerations that are of decisional significance in passing upon the fitness of applicants. He correctly noted that the showing required of a company which has been able to operate continuously and successfully and, therefore, can establish going concern status, is less demanding than that required of a new company or of a company that has had prolonged lapses in its operations. He further took cognizance of the clearly indicated intent of Congress in enacting the so-called supplemental air carrier legislation in 1960 that only those carriers that established minimum

[39] We have considered the arguments in opposition to a grant of split-charter authority and have found nothing that warrants elaboration on the examiner's disposition of that issue.

[40] USQA, which the examiner also found unfit, filed exceptions to the recommended decision. However, it did not challenge the examiner's findings, but urged only that it was attempting to obtain financing and that decision on its qualifications should therefore be deferred. It presented nothing that would warrant such a deferral.

financial strength and stability sufficient to protect the public from risk or abuse should be permitted to operate. After reviewing the examiner's findings in the light of the record and the contentions of these three applicants, we conclude that he applied the appropriate tests to the evi-

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dence of record fairly and equally, and correctly found each of the applicants to be unfit within the meaning of the statute.[41]

Specifically, Conner points to the excellent safety and compliance record of a predecessor company in past operations under the direction of Mr. Conner. Stewart points to the limited scope of the operations he proposes. Both Conner and Stewart attack the examiner's failure to accept their valuations of certain aircraft owned by them, and to find them financially fit on that basis notwithstanding the absence of binding commitments, backed by financial proof that would assure that the needed capital would be forthcoming. Holiday challenges the finding that it is a "paper" company.

However, the inescapable fact is that each of these applicants comes before us here as a new company that is not now operating large aircraft in air transportation. As such, it must shoulder a substantial burden in establishing that it is fit to be entrusted with a certificate of public convenience and necessity. The fact that certain of the deficiencies in their showings might not be disqualifying for a going concern which has demonstrated through continú-

[41] The examiner's findings are set forth in part in the body of his decision and in part in Appendix A thereto.

ous operations its ability to cope successfully with the ups and downs of financial fortune, does not warrant a finding that they too are fit. In short, the matters urged upon us by the applicants, do not, when viewed in the context of their over-all showing, warrant conclusions different from those reached by the examiner.

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ONA and Standard. These two carriers present a special situation. For many years both ONA and Standard conducted successful supplemental operations. Subsequent to the time that they received interim certificates in 1962, ONA went into bankruptcy and Standard had its interim certificate suspended by the Board on the ground that it was no longer financially fit. The record before the examiner afforded no basis for a finding that they are now fit. However, the carriers have now come forward with substantial allegations of financial rehabilitation supported by a detailed presentation of the changes they claim have occurred and render them now fit. ONA points to evidence presented in its behalf in the *Reopened Transatlantic Charter Investigation,* Docket 11908, which is now pending before the Board, and in reports and documents filed with the Board. Standard similarly points to the availability of finances which it asserts will establish its fitness.[42] The showing that has been made warrants reopening the record in this case

[42] Standard's allegations rest principally on evidence introduced in the proceedings in Docket 13890 on its request for a lifting of the suspension of its interim certificate. By Order E-23222, February 11, 1966, the Board vacated the suspension of Standard's interim certificate.

to afford the two applicants an opportunity to attempt to establish that they are now qualified.[43]

11762

Vance. The examiner found that Vance, although marginal in financial qualifications, was fit, willing, and able. Recently, however, facts have come to the Board's attention that require, in the fulfillment of our responsibilities, a reopening of the record for further hearing on Vance's current qualifications. Thus, Vance has been found unqualified by the appropriate military agency for the performance of services for the Department of Defense. Further, Vance's air carrier operating certificate has been suspended by the Federal Aviation Agency on an emergency basis, with the result that the carrier cannot provide any services under its interim authority.

We obviously have formed and express no opinion on the alleged violations upon which the suspension order of the FAA was based. Vance has appealed that suspension to the Board, and the disposition of the matter will be made on the record in that proceeding. However, we cannot close our eyes to the possible economic effect on Vance of its disqualification for military business, and the suspension of its operations as a result of FAA action. In these circumstances, we find that further hearing on the applicant's fitness is warranted.

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[43] The proceedings on remand will embrace not only the fitness issue but also the question of the precise authority that should be granted the two carriers if they are ultimately found to be qualified.

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Terms and Conditions

The examiner's recommended decision contains an outline of a comprehensive set of regulations designed to govern the charter operations of the supplemental air carriers under their section 401 certificates. His recommendations would incorporate into one regulation the pertinent provisions of the interim certificates of the supplemental air carriers; the existing provisions of Part 208, which contain various terms, conditions and limitations applicable to supplemental air transportation; and additional conditions patterned after provisions appearing in Part 295, the regulation governing transatlantic supplemental air transportation. We have, for the most part, followed his recommendations and are issuing in one regulation (revised Part 208 attached hereto and made a part hereof) all of the rules for the domestic charter operations of the supplemental air carriers certificated under section 401, except those rules applicable to inclusive tour charters which will be issued as a separate regulation (Part 378). The only major change from the examiner's recommendations concerns the reporting requirements which we have condensed from those now provided in Part 295 in accordance with the Bureau's proposal.

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We have considered the remaining contentions of the parties and their exceptions to the recommended decision and find that, except to the extent indicated herein, they should not alter the results we have reached.

Accordingly, in view of the foregoing and all the facts of record, we find:

1. That the public convenience and necessity require that certificates be issued to American Flyers, Capitol, Johnson, Modern, Purdue, Saturn, Southern, TIA, World, and Zantop authorizing supplemental air transportation of persons and property between any point in any State of the United States or the District of Columbia and any other point in any State of the United States or the District of Columbia, such authority, except for inclusive tour authority which is authorized for a period of five years, to remain in effect for an indefinite period.[44]

2. That the applicants listed in paragraph 1 above are each citizens of the United States within the meaning of the Act, and are fit, willing, and able properly to perform the supplemental air transportation hereinabove authorized to be performed by each of them and to conform to the provisions of the Act and the rules, regulations, and requirements of the Board thereunder.

3. That the public interest requires the adoption of a new Part 378 of the Special Regulations and revision and reissuance of Part 208 of the Economic Regulations.

4. That the record in this proceeding should be reopened for further hearing at a time and place hereafter to be designated on the qualifications for supplemental air transportation of ONA, Standard, and Vance, and on the scope

[44] We are revising the certificates attached to the recommended decision so as to delete paragraph 2 since the authority to engage in supplemental air transportation of persons and property includes military as well as civilian charters.

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of charter authority, if any, which should be granted to ONA and Standard.

5. That all applications consolidated herein except insofar as such applications seek authority for overseas and/or foreign air transportation and/or air transportation between places in the same territory or possession, filed by Conner, Holiday, Stewart, and USOA should be denied, and that decision upon such applications, insofar as not denied by this paragraph, should be deferred until further order of the Board.

6. That, except to the extent otherwise indicated, all applications involved in this proceeding, except insofar as such applications seek authority for overseas and foreign air transportation and air transportation between places in the same territory or possession filed by the carriers listed in paragraph 1 hereof, should be denied, and that decision upon such applications, insofar as not denied by this paragraph or hereinabove granted, should be deferred until further order of the Board.

7. That decision upon the applications filed by ONA, Standard, and Vance should be deferred until further order of the Board.

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8. That the motion filed herein by ONA, except to the extent granted herein, should be denied; and that the motion filed herein by World should be dismissed.[44]

An appropriate order will be entered.

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[44] On September 20, 1965, ONA filed a motion to reopen the record for the purpose of receiving new evidence on ONA's fitness

MURPHY, Vice Chairman, and MINETTI, Member, concurred in the above opinion. GILLILLAND, Member, filed the attached concurrence and dissent. MURPHY, Chairman, and ADAMS, Member, did not take part in the decision.

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GILLILLAND, MEMBER, CONCURRING AND DISSENTING:

I have been unable to escape the conclusion that the decision is contrary to law and to the policy of the Federal Aviation Act.[1] The Board has exceeded its statutory authority by defining all-expense tours by tour operators as constituting "charter trips in air transportation" and, therefore, supplemental air transportation within the meaning of section 101(33). The action is contrary to policy in that it tends to destroy or seriously impair the regulatory scheme.

The Board concedes that supplemental air carriers are prohibited from providing all-expense charter tours.[2] Cer-

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or, in the alternative, to take official notice of pertinent reports required to be filed by ONA with the Board and evidence of ONA's fitness presented in the *Reopened Transatlantic Charter Investigation*, Docket 11908 *et al.* On September 27, 1965, World filed a motion to reopen the record for receipt in evidence of two paragraphs from the Fifth Report of the Air Transport Licensing Board of Great Britain or, in the alternative, to take official notice of these two paragraphs. The Board deferred decision on these motions until after oral argument (Order E-22757) October 11, 1965). Since we have decided to reopen the record for further hearings on ONA's qualifications, ONA's motion, except to the extent granted herein, will be denied. World has requested that its motion be withdrawn and, accordingly, its motion will be dismissed.

[1] Federal Aviation Act of 1958. 72 Stat. 731, as amended, 49 U. S. C.

[2] The examiner found (R. D. p. 15), and the Board adopted the finding, that supplemental carriers are prohibited from selling in-

tainly if the Board considered that it had authority to authorize supplementals to provide such service it would have granted the authority directly rather than indirectly to unregulated tour operators. The Board has determined[3] that individually ticketed service by supplemental carriers was not within the definition of charter service as set forth in the Act. However, in this case it has attempted to circumvent the law by injecting the tour operators between

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the supplemental carriers and the general public, with the view that by this device the fundamental distinction between charter and individually ticketed service might be preserved since tour operators will solicit the general public, sell individual tickets, and then merely wet lease aircraft from supplementals. Consequently, a tour operator will be able to provide an individually ticketed, scheduled service between every large city in the United States and all major resort areas, and to all other cities for that matter. The tour operator device indirectly puts the supplemental air carriers in the business of providing individually ticketed service, and is per se unlawful. The

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dividually ticketed service as part of an all-expense tour. The examiner said:

> ". . . . There is some suggestion by various applicants here that they should be authorized to sell individually ticketed all-expense tours directly as well as by charters to ticket agents. The Board has already determined that such proposals are tantamount to individual services which do not fall within the scope of charter transportation." n. 30.

[3] *Transatlantic Charter Investigation,* Order E-17607, October 18, 1961.

Board cannot accomplish by indirection what is directly proscribed.

Two cases are primarily relied upon as support for the conclusion that all-expense tours are legal. *American Airlines, Inc.* v. *C.A.B.*, 348 F.2d 349 (1965). *National Bus Traffic Association* v. *United States*, 143 F. Supp. 689 (1956) (*Tauck* case). The *American* case contrary to the majority's holding gives the Board very little discretion in defining "charter," and the discretion is severely limited.

The Board concludes, however, that since the *American* case, *supra*, permitted the Board to define "split charters" as "charter trips in air transportation" it therefore has the power to define charter so as to include all-expense tour charters. Such conclusion is not valid since split charters are a totally different concept than that of all-expense tour charters. A split charter involves the solicitation of *two bona fide charterable groups* to ride on the same aircraft. Each group is independently charterable

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and is not formed by *the sale of individually ticketed travel* to the general public. All-expense tour charters, on the other hand, involve a direct solicitation of the general public for individually ticketed travel. The *American* case holds that so long as a split charter does not involve individually ticketed travel it is lawful. However, all-expense tour charters do involve the direct solicitation of the general public for individually ticketed service and are therefore unlawful under the holding in the *American* case.

The *American* case does not give the Board carte blanche to define charter trips. The language of the court is severely restrictive as shown by the following:

(11769, 11770)

> "We conclude Congress intended, *although not without limits,*" that the Board be free to define charter . . . "*whatever the limits* on the Board's power of definition, *those limits* are not breached by a definition which permits two one-half groups to charter one-half an aircraft each." (Emphasis added.) p. 354.

The court specifically adjured the Board to "maintain the integrity of the charter concept" and "to preserve the distinction between group and individually ticketed travel; *within these limits* it is for the Board to evolve reasonable definitions." The Board's limits of definition are clear to preserve the distinction between group and individually ticketed service. This, the Board has not done since it has employed a sham device, *i.e.,* the "tour operator", to eliminate the distinction. The *American* case clearly indicates that such action is *beyond the limits* of the Board's authority of definition.

The Board also relies upon the *Tauck* case, *supra,* which emanated from a decision of the Interstate Commerce Commission under the Motor Carrier Act. That case involved

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a grant of a specific authorization, to a specific qualified applicant, under a specific regulatory statute, and is readily distinguishable from the unsolicited gratuity broadly granted to the nebulous all and sundry who are the unknown and undefined beneficiaries in this case. In the recent *Transatlantic Charter Investigation,* decided October 8, 1963,[4] it was argued to the Board that the classic definition

[4] Appendix A to Order E-20530, February 24, 1964.

of charter, as defined by the Interstate Commerce Commission, requires that exclusive use of a vehicle be engaged by a single charterer. The Board rejected the definition stating:

> ". . . . [R]egulatory concepts under the Interstate Commerce Acts are not to be imported uncritically into the Aviation Act. *C.&S. Air Lines* v. *Waterman Corp.*, 333 U.S. 103 (1948); *Las Vegas Hacienda, Inc.* v. *C.A.B.*, 298 F.2d 497 [sic] (430) (9th Cir., 1962)." Appendix A to Order E-20530, February 24, 1964. n. 51.

There is no attempt to distinguish the Board's acceptance in this case of surface transportation precedent.[5]

Furthermore the Board errs in the conclusion that all-expense tour charters are well established in surface transportation and that the legality has long since been settled, as against contentions that they are mere subterfuges for individually ticketed transportation. The *Tauck* case is cited as support. However, the stated reasons for judicial affirmation of the ICC action in the *Tauck* case were that there was no express provision in the Motor Carrier Act and no legislative history to indicate that all-expense tour

operators were to be prohibited from carrying on the long-established practice of chartering buses. The court also said "that no question about tour operators' use of charter

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[5] Judge Burger in *American Airlines, Inc., et al.* v. *C. A. B.* (C. A. D. C. Nos. 18833 *et al.* decided March 2, 1966) pointed out "The Supreme Court said recently in another context, "federal agencies are not fungibles. . . —Congress has treated the matter with attention to the particular statutory scheme and agency." *UAW* v. *Scofield*, 382 U. S. 205, 210 (1965).

buses was raised for 13 years after the Motor Carrier Act became effective" and this is a "cogent consideration." The court gave great weight to the fact that there was a long-established practice in the motor carrier field to permit all-expense tour charters. On the other hand in air transportation there has never been a single instance of an all-expense tour charter by a travel agent. In contrast to the complete absence of legislative history to the Motor Carrier Act relating to all-expense tours by tour operators, it will be shown, *infra*, p. 6 that there is a plethora of legislative history relating directly to all-expense tours and showing a clear and unequivocal intention to prohibit all-expense tours by tour operators in air transportation.

Although the Board states that the legality of all-expense tours in surface transportation is well settled, this is not the case. On February 7, 1966 the Interstate Commerce Commission instituted a general investigation[6] of the operations of tour operators and bus lines which conduct all-expense tours. The basis for the investigation was that the Commission believed that considerable confusion and abuses had arisen in the all-expense tour charter operations conducted by travel brokers.

The investigation was based on decisions in *Michaud Bus Lines, Inc., Extension-Tours,* 100 M.C.C. 432 (1966), and *The Greyhound Corporation* v. *Edwards,* 100 M.C.C. 453 (1966). In those cases the regularly certificated bus companies alleged that tour operators and other carriers, under the guise of providing all-expense tours were actually pro-

[6] Ex Parte No. MC-29 (Sub-No. 1) and (Sub-No. 2) "Passenger Transportation in Special Operations" and "Operations of Brokers of Passenger Transportation."

viding unauthorized individually ticketed scheduled point-to-point bus service.

11772

In the *Greyhound* case, the Commission stated that the concern of the scheduled bus companies with respect to the operations of tour operators was easily understood "for the closer that the services arranged by brokers approach point-to-point, 'ordinary' bus service, the more likely they are to attract patrons from the regular schedules of carriers such as Greyhound." The Commission in the *Greyhound* case, was sufficiently impressed with the allegations of the bus companies to conclude that an investigation of the entire field of all-expense tour charters was warranted.

The ICC investigation will include the issue of imposing regulations to control the all-expense tour charters. Attached to the order of investigation and to be considered as an issue were revised regulations submitted by the National Bus Traffic Association.[7] The proposed regulations are designed for one purpose only, to assure that an all-expense tour charter is required by the public convenience and necessity and is not individually ticketed point-to-point regularly scheduled transportation. Based on the foregoing all-expense tours in surface transportation are not now well established.

The legislative history of the Federal Aviation Act, shows that Congress specifically and categorically intended to prohibit "travel agents"[8] from soliciting the general public for all-expense tour charters, and then char-

[7] See Appendix I.

[8] The authority of the new regulation (Part 378) is even broader than this and is not limited to travel agents.

(11772, 11773)

tering aircraft from supplemental air carriers. It is crystal clear that Congress considered all-expense tours by travel agents to be the same as individually ticketed services and therefore prohibited. The original Senate bill, S. 1969,

11773

August 8, 1961, contained a definition of charter which would have specifically permitted the Board to authorize all-expense tours by travel agents. However, the House Committee refused to adopt the Senate definition and eliminated it. The Senate agreed to the House rejection and three senators, managers of the Senate bill, stated the reasons for concurrence as being the desire not "to confer this power on the Board." The Joint Conference Committee adopted the House version and the five managers of the bill stated plainly and individually that the prime reason for the rejection by the House of the Senate version was to eliminate the provisions for all-expense tour charter authority by travel agents.

Mr. Oren Harris, Chairman of the House Interstate and Foreign Commerce Committee, stated categorically:

> "... *Travel agents, being agents for transportation services, rather than carriers themselves, have never been allowed to engage airplanes in their own name for their own account. Nor should they be allowed to. That is why the House objected to the proposal of the Senate including the 'all-expense tour' language.*" 108 Cong. Rec. 12322 (1962). (Emphasis added.)

Mr. Williams, Chairman of the House Committee on Transportation, was equally clear on this point in answering the question asked of him by Congressman Walter:

"It [the Senate bill] proposed that all-expense travel agents could charter airplanes in their own name and then sell space to the public for all-expense tours. This would have changed completely the function of the travel agent and put him in position to engage in rate cutting.

"Can the gentleman tell us what happened to that provision?"

MR. WILLIAMS. "The Senate receded and accepted the position of the House on that provision . . . . The all-expense tours that were provided for in the Senate definition were not accepted by the House, and the Senate receded and concurred in our position on that, also." 108 Cong. Rec. 12322 (1962).

11774

Senator Scott, the Senate manager of the bill, was emphatic with respect to this issue and the Board's lack of authority to authorize all-expense tours:

"Another essential element is that the person who charters an airplane cannot resell the space to individuals or solicit the general public to buy space. This is necessary to prevent break-down of the regulatory system, and most particularly the rate regulatory system. If this were not one of the rules, a travel agent could charter an airplane, and then offer the seats to the general public at less per head than the tariff fares the airplane must observe as to each passenger.

"The Senate bill proposed to modify the established concept of charter by permitting charters to 'a group on an all-expense-paid tour.' Such a group could have

been assembled from the general public. This would have meant that travel agents could have chartered aircraft, and then sold the space to ordinary passengers traveling on all-expense tours.

"The committee of conference wisely eliminated the Senate provision. The bill thus, in effect, confirms the established law as to a charter in air transportation. There should be no question about that. *The Congress has considered, and has rejected, a proposal to change the established meaning of charter so as to have permitted travel agent charters for all-expense tours. Such charters have no place in air transportation. This being the thrust of the congressional action, it would be clearly improper if the Civil Aeronautics Board were hereafter to undertake to rewrite the law and to authorize, under guise of charter, all-expense-tour operations, ...*" 108 Cong. Rec. 12284-5 (1962). (Emphasis added.)

Senator Thurmond, commenting upon the Senate version of all-expense tours by travel agents, stated:

"I am advised that the CAB Bureau of Economics has advocated that a so-called all-expense tour concept be grafted onto the existing charter definition. *This would be intolerable, and has been expressly rejected by the conferees. The Senate receded from its charter definition which included this all-expense tour provision.*" 108 Cong. Rec. 12285 (1962). (Emphasis added.)

Senator Cotton added his opinion of the Senate version of all-expense tours:

"I do wish to comment briefly on one aspect of the conference committee's action. The conferees agreed to drop the language in the Senate bill which defined charter service, and permitted the sale of tickets on

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charter flights to individual members of the general public who were on all-expense-paid tours. *I am wholly in accord with the action in eliminating the all-expense tour provision and thus refusing to confer this power on the Board.*

"The elimination from the bill of the general Senate language defining charter service, should not, however, in my view, be construed as giving the Board any kind of carte blanche with respect to long-established principles of law relating to charters. The Civil Aeronautics Board has, in the past, rejected proposals to water down the safeguards against the abuse of charter service, and I hope the Board will continue to be firm in this respect. *The Board has a serious obligation to see that charter services do not become individually ticketed services through subterfuge or abuse.*" 108 Cong. Rec. 12284 (1962). (Emphasis added.)

The foregoing and unanimous statements of the managers of the bill, in both the Senate and House, demonstrate beyond peradventure that Congress did not intend to grant the Board authority to define all-expense tours by travel agents as charter trips in air transportation. Despite the Board's efforts to obscure the intent of Congress, there is no ambiguity.

(11775, 11776)

The Board, on the other hand, concludes that since PL 87-528, as adopted, did not contain a definition of charter, therefore, "this matter was to be left to the Board to determine." The Board reasons strangely that because the Congress rejected a definition which would in fact have given the Board authority and failed to include any definition of charter then the Board acquires complete discretion to define "charter." If ambiguity were present, I still interpret the rejection of the Senate version as meaning the Congress did not want the Board to have the authority. However, there is no ambiguity as the foregoing legislative history clearly shows.

The Board's reasoning obscures clear legislative history and violates all canons of statutory construction. The Board finds, "In short, the Senate version of the Bill as well as the Senate committee report make clear that the Senate was dissatisfied with the Board's historic refusal to authorize inclusive tour charters." There is not one scintilla of legislative history of any kind to support this gratuitous conclusion.

11776

The Board takes a position that the statements of the floor managers are not to be referred to and the House rejection of the Senate attempt to confer all-expense tour authority on the Board clarifies the entire issue. This is indeed esoteric statutory construction. According to the Board a statement of Representative Harris expressed no opinion as to the Board's legal authority to authorize all-expense tours. It seems to me that Mr. Harris was quite clear that the Board should not and further would not have legal authority to authorize all-expense tours. Mr. Harris,

in a written statement submitted for the record, pointed out that the Senate bill contained a definition of charter which would have permitted the Board to authorize all-expense tour charters but the House rejected such definition. Obviously if Mr. Harris wanted the Board to have such authority he would not have objected to the Senate version and if he thought the Board, under the amended bill, had such authority he would have emphatically and clearly said so at this point.

The Act sets forth a comprehensive scheme for the regulation of all air carriers, including supplementals.[9] Under this scheme it is the scheduled carriers who constitute the backbone of the air transportation system. In 1962 Congress did create a new class of carriers, supplementals, for one reason only,—*to supplement scheduled air transportation by providing "charter service."* Such carriers were not created to duplicate scheduled services by wet leasing aircraft to persons who then sell individually ticketed space at lower rates than offered by the scheduled carriers. Under the Board's decision the supplementals will have

every incentive to abandon the planeload charter concept, the sole reason for their existence, and turn to the wet leasing of aircraft to tour operators.

The Board, on the other hand, concludes that they will have an economic incentive to continue planeload charter service. This is illogical since, with the active assistance of 5,500 or more tour operators promoting the services and free of affinity regulations and restrictions against

[9] Federal Aviation Act of 1958. Sec. 401. (72 Stat. 754, as amended by 76 Stat. 143, 49 U. S. C. 1371.)

mass advertising, the supplementals will hardly fail to find it inviting to concentrate their efforts on the promotion of all-expense tours. The British experience in this respect is significant. The British tour operators have concentrated heavily on selling all-expense tours since a booking on the scheduled airlines returns a profit of only 7½ percent to the travel agent, whereas, on an all-expense tour charter with an independent airline there is a minimum profit of 16 percent, and much more if the tour operator charters the aircraft and preempts hotel rooms.[10]

The "all-expense tour" as contemplated by the Board does not "supplement" scheduled services. It merely duplicates, at cutrate fares, the services now available on the certificated carriers. The Board attempts to distinguish and to show that all-expense tours are "supplemental" in that by the use of the "charter" mechanism a different service is provided. It contends that the all-expense tour is different because the passenger is subjected to the rigidities of a group itinerary, must be willing to travel and share facilities with strangers, must agree to the necessary regimentation of group travel, will be confined to predetermined departure and arrival times, is a different class of traveler

not now using scheduled services, and, finally, that the restrictions imposed by the Board make it an entirely different service.

None of these attempted distinctions will stand scrutiny. To demonstrate that all-expense tours do not supplement, but merely duplicate, it is enough to construct a theoretical

[10] *The Economist*, February 12, 1966, p. 627.

tour between any number of resort areas. Any New York tour operator could solicit the general public by means of mass media advertising (*i.e.*, newspapers, radio, television) for an all-expense tour to New York-Miami-San Juan, departing New York at 12 noon daily and returning to New York seven days later at 5 p.m., with one night in San Juan and by cruise ship to the free port of St. Thomas, at 110 percent of the lowest available fare, or $26.00 over the lowest available New York-Miami-San Juan fare, including hotel accommodations and water tour. There is no requirement that all tour passengers be accommodated at the same hotels or that they take part in the overnight side trip. As can be readily seen from the above, there is no rigidity of itinerary, no regimentation, and scheduled services can be provided. A group assembled for the purposes of a tour has no cohesiveness or affinity. It is not a "charter" under any definition but a unit for one reason only—to be transported between New York, Miami, and San Juan at a cut-rate price. The so-called restrictions impose no inconvenience for the point-to-point passengers, but the services do offer a substantial financial incentive.

This same sort of service can be provided by a tour operator between any pair of points,[11] viz., New York-San Juan nonstop with overnight cruises to two of the three Virgin Islands for $10.50 over the New York-San Juan fare.

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A passenger merely interested in a New York-San Juan nonstop could remain in San Juan and be out of pocket

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[11] New York-San Francisco-Honolulu and an overnight trip to The Outer Islands.

only two nights' lodging and meals. This, of course, would be no financial deterrent to passengers who are already receiving a tremendous bargain for about $10.50 above the lowest available fare. The total trip cost is less than the normal fares even if the overnight side trips are omitted. Several other examples could be given, viz., New York-Las Vegas, Los Angeles, and San Francisco. All of these tours would be extremely attractive to the normal vacation-bound passenger now utilizing scheduled services. Today the average vacation traveler is peripatetic and such tours would fit in with almost any vacation schedule. There is therefore a reasonable basis for assuming that the majority of vacation-bound passengers who now utilize the scheduled carriers for this type of service will be diverted to the tour service of the supplemental carriers.

A daily schedule between such points providing point-to-point air transportation would be heavily utilized by a substantial number of passengers. Such service could be provided every hour of the day and every day of the week. This is authority which the certificated scheduled carriers do not have. The certificated carriers may provide all-expense tours but they are limited to their route structures. More important, however, is the fact that the certificated carriers are prohibited from providing charter trips in air transportation solicited not only from individual members of the public but also if arranged by a tour operator.[12] Thus the principal distinction between the two services is, in fact, that an authority is being granted to the unidentified tour operators which is vastly greater than that possessed by the

[12] Part 207 of the Board's Economic Regulations. (14 C. F. R. 207.)

regular carriers who have gained their certificates in competitive adjudicatory proceedings. The authority granted to the tour operators is subject only to the Board's administrative discretion, if it should be considered that it has retained any, and for which no guidelines have been set up in the new regulation.

The Board's finding that all-expense tours are directed at and will attract a new class of travelers, is directly contrary to the holding of the Board in the *Skycruise Case*, 10 C. A. B. 751 (1949), wherein a request for all-expense tour authority was denied for the reason that it was merely duplicative of the service of the scheduled carriers. It was there stated:

> "In the final analysis, we are not convinced that the evidence in this case warrants the conclusion that the public convenience and necessity require the proposed service. While facilities providing for escorted tours serve a useful public purpose, it has not been satisfactorily demonstrated that such purpose cannot be met by the presently certificated carriers and routes. The record discloses that the services of the domestic carriers cover all types of vacation travel by air, and that the establishment of any additional service to accommodate vacation travel would result in substantial diversion of traffic and revenue contrary to the public interest. The applicants' contention that there will be no diversion since the potential to be tapped will represent newly generated traffic is not persuasive. In our judgment, group escorted travel, like any other

form of tourism, has its origin within vacation travel, and any additional and duplicating service of the type here proposed would diminish the size of the vacation travel market presently available to the domestic certificated carriers. The impact of such services and the losses resulting therefrom may have a serious effect upon these latter carriers." 10 C. A. B. 751, 755 (1949).

The Board's well-reasoned conclusions in the *Skycruise Case* apply with equal, if not greater, force to this case for there is here no evidentiary record as to the public need for such services, or its diversionary impact on the scheduled services.

11781

The Board finds that all-expense tours will not divert traffic from the scheduled carriers primarily on the theory that tour operators will lack the financial incentive to promote such tours. The previously mentioned British experience rebuts this conclusion and, further, since a large part of such traffic is promoted and sold by travel agents, agents offering all-expense group tours on flights they have committed themselves to charter will logically channel their group tour traffic to such charter flights in order to preserve their investments in organization and promotion. Indeed the Board's decision raises a substantial conflict-of-interest issue. The travel agents now account for approximately 30 percent of the scheduled carriers' traffic, but under the Board's decision these travel agents, who are the legal agents of the scheduled carriers, will become their direct competitors.

The Board finds that, in any event, diversion will be *de minimis* and, in view of the high current earnings of the scheduled carriers, they can withstand the impact of uncontrolled entry and unregulated point-to-point competition. There is no basis in the record for this finding and such a conclusion is contrary to the regulatory scheme irrespective of the amount of diversion.

Assuming, *arguendo,* that all-expense tours by tour operators are legal, then before the Board could properly determine that authorizations should issue, a proceeding similar to that of the *Air Freight Forwarder Case,* 9 C. A. B. 473 (1948) is required. In that case 78 identified applicants each sought specific authority to engage as indirect air carriers in the transportation of property. These applicants submitted full and complete plans of proposed

operations and submitted evidence of the need for such authority. As a result the Board was able to make an intelligent determination as to whether the public interest required airfreight forwarders. The *Air Freight* case was a thoroughly threshed-out adjudicatory proceeding. In the case herein the Board does not know the identity of the applicants, the plan of operations, if a need exists for such service, or whether it is in the overall public interest.

These matters are even more important here than in the case of the forwarders since the tour operators will be the principals and, in effect, the actual operators of the aircraft. Airfreight forwarders do not operate aircraft, determine the points to be served, or the frequency of operation. Before the Board issues authority by exemption to indirect carriers it must make findings of public interest and

public need.[13] The Board is here unable to make such findings. Moreover, it can scarcely circumvent the illegal action or supply the missing evidence by labeling its course experimental or developmental.

Under the Board's decision any one, including existing travel agents, can qualify as a tour operator merely by filing a statement of qualifications. There are no substantive standards set forth by which the Board can measure qualifications. Therefore, presumably any one filing a statement is qualified and it would appear that the Board must issue an authorization since it has retained no discretion.[14] Obviously, an evidentiary hearing is necessary. Without an investigation, with known applicants, the Board has relinquished its statutory authority and opened the door to uncontrolled entry and wasteful competition.

/s/ WHITNEY GILLILLAND

11783

APPENDIX I

Ex Parte No. MC-29-(Sub-No. 1)

APPENDIX

I. *Revised regulations relating to special operations applications and certificates proposed by the National Bus Traffic Association*

(a) All Applications for Special Operations Certificates, pursuant to the provisions of Section 207(a) of the

[13] Federal Aviation Act of 1958. Sec. 416(b). (72 Stat. 771, 49 U. S. C. 1386.)

[14] New Part 378, Subpart B, sec. 378.11(d).

Interstate Commerce Act, for authority to transport passengers in "Round-Trip Sightseeing or Pleasure Tours" on a territorial, State, county, area, or regional basis, shall specifically set forth the service proposed as follows:

"* * * the transportation of passengers and their baggage, in Special Operations limited to Round-Trip, Sightseeing or Pleasure Tours designed for leisurely travel, as distinguished from expeditious point-to-point transportation, subject to all of the following requirements:

(1) Each such Tour must include:

(i) sightseeing stops en route or stops at points or events of interest en route, and

(ii) an overnight stop every night during the entire tour, and

(2) On each such Tour the passengers must:

(i) maintain their identity as a group for the duration of the tour, and

(ii) engage in some group activities that are organized, supervised and controlled by the carrier, and

(iii) be accompanied by a tour conductor or guide (who may be the driver of the vehicle qualified to act as a tour conductor or guide), and

(3) The price of each such Tour must include all of the following elements:

(11783, 11784)

(i) some of the meals, and

(ii) lodging for each night during the entire tour, and

(iii) admission fees to any points or events of interest visited for which a fee is charged, and

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(iv) the cost of transportation."

(b) All Applications for Special Operations Certificates which are not expressed in the exact language used in Paragraph (a) shall specify with particularity the specific points of origin and destination by name and not on a territorial, State, county, area, or regional basis.

(c) Every Applicant for a Special Operations Certificate shall be required to prove public convenience and necessity for the specific authority sought, and in the case of Applications not expressed in the exact language used in Paragraph (a), shall be required to prove that public convenience and necessity requires service from, to, and between each origin and destination named in the Application.

(d) Any Special Operations Certificates issued by the Commission pursuant to such Applications shall specify the conditions and limitations set out in Paragraphs (a) or (b) in order to prevent the establishment of Regular-Route Service under such Special Operations Certificates.

II. *Definition of "special operations" proposed by Manhattan Transit Co. et al.*

Definition of "special operations". Operations of motor common carriers of passengers shall be deemed to be "special operations" when they are called "special operations" in a certificate of public convenience and necessity issued by this Commission or when the certificate holder is authorized to perform any of the following:

1. Service in sightseeing or pleasure tours.
2. Service in religious pilgrimages to shrines or other places of worship.
3. Non-scheduled service to and from seashore and other pleasure and health resorts.
4. Service to and from air ports.
5. Door-to-door non-scheduled service.
6. Service limited to the transportation of no more than a certain number of passengers in a single vehicle.
7. Any other service designated for a limited or particular purpose.

(11786)

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Order No. E-23350

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.,
on the 11th day of March, 1966

Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision which is attached hereto and made a part hereof;

IT IS ORDERED:

1. That certificates of public convenience and necessity for supplemental air transportation in the forms attached hereto be issued to American Flyers Airline Corp., Capitol Airways, Inc., Johnson Flying Service, Inc., Modern Air Transport, Inc., Purdue Aeronautics Corp., Saturn Airways, Inc., Southern Air Transport, Inc., Trans International Airlines, Inc., World Airways, Inc., and Zantop Air Transport, Inc.

2. That said certificates shall be signed on behalf of the Board by its Secretary, shall have affixed thereto the seal

of the Board, and, subject to extension of their effective dates in accordance with the provisions of said certificates, shall be effective on May 13, 1966.

3. That the record in this proceeding be and it hereby is reopened for further hearing at a time and place hereinafter to be designated on the qualifications for supplemental air transportation of Overseas National Airways, Inc., Standard Airways, Inc., and Vance International Airways, Inc.

4. That the interim certificates and interim authority of the supplemental air carriers listed in paragraph 1 hereof shall terminate upon the effectiveness of the certificates issued hereunder: *Provided, however,* That the interim authority now held by such carriers to engage in overseas and foreign air transportation and in air transportation between places in the same territory or possession shall continue in effect until further order of the Board.

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5. That the interim certificates and interim authority of the carriers listed in paragraph 3 of this order shall continue in effect until further order of the Board.

6. That, except to the extent otherwise indicated, the motion filed on September 20, 1965, by Overseas National Airways be and it hereby is denied; and that the motion filed on September 27, 1965, by World Airways be and it hereby is dismissed.

7. That all applications consolidated herein for supplemental certificates, except insofar as such applications seek authority for overseas and/or foreign air transportation

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and/or air transportation between places in the same territory or possession, heretofore filed by Conner Air Lines, Inc., Holiday Airways, Inc., Stewart Air Service, and United States Overseas Airlines, Inc., be and they hereby are denied, and that decision upon such applications, insofar as not denied, by this paragraph, be and it hereby is deferred until further order of the Board.

8. That decision on the applications of Overseas National Airways, Standard Airways, and Vance International Airways be and it hereby is deferred until further order of the Board.

9. That, except to the extent otherwise indicated, all applications consolidated in this proceeding, except insofar as such applications seek authority for overseas and/or foreign air transportation and/or air transportation between places in the same territory or possession of the United States filed by the carriers listed in paragraph 1 of this order, be and they hereby are denied; and that decision upon such applications, insofar as not denied by this paragraph or hereinabove granted, be and it hereby is deferred until further order of the Board.

10. That there be and hereby are adopted and issued concurrently herewith regulations of the Board designated Part 378 of the Special Regulations and amended regulations of the Board designated Part 208 of the Economic Regulations, which are attached hereto and made a part hereof, and which shall be effective on May 13, 1966.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

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Issued pursuant to
Order No. E-23350

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

AMERICAN FLYERS AIRLINE CORP.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

> Between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Charter services performed by the holder for the Department of Defense between points in the contiguous 48 states, on the one hand, and Alaska and Hawaii, on the other hand, shall be furnished at the rates and

(11788, 11789)

compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

(2) Nothing in this certificate shall be construed as authorizing air transportation within the State of Alaska.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

11789

This certificate shall be effective on May 13, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-23350), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authorization to operate inclusive tour charters in accordance with the provisions of Part 378 of the Special Regulations shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

11790

Issued pursuant to
Order No. E-23350

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

CAPITOL AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

> Between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Charter services performed by the holder for the Department of Defense between points in the contiguous 48 states, on the one hand, and Alaska and Hawaii, on the other hand, shall be furnished at the rates and

(11790, 11791)

compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

(2) Nothing in this certificate shall be construed as authorizing air transportation within the State of Alaska.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

11791

This certificate shall be effective on May 13, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-23350), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authorization to operate inclusive tour charters in accordance with the provisions of Part 378 of the Special Regulations shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

11792

Issued pursuant to
Order No. E-23350

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

JOHNSON FLYING SERVICE, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

> Between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Charter services performed by the holder for the Department of Defense between points in the contiguous 48 states, on the one hand, and Alaska and Hawaii, on the other hand, shall be furnished at the rates and

compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

(2) Nothing in this certificate shall be construed as authorizing air transportation within the State of Alaska.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

11793

This certificate shall be effective on May 13, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-23350), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authorization to operate inclusive tour charters in accordance with the provisions of Part 378 of the Special Regulations shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

11794

Issued pursuant to
Order No. E-23350

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

MODERN AIR TRANSPORT, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

> Between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

> (1) Charter services performed by the holder for the Department of Defense between points in the contiguous 48 states, on the one hand, and Alaska and Hawaii, on the other hand, shall be furnished at the rates and

compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

(2) Nothing in this certificate shall be construed as authorizing air transportation within the State of Alaska.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

11795

This certificate shall be effective on May 13, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-23350), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authorization to operate inclusive tour charters in accordance with the provisions of Part 378 of the Special Regulations shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

(11796)

11796

Issued pursuant to
Order No. E-23350

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

PURDUE AERONAUTICS CORP.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

> Between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

> (1) Charter services performed by the holder for the Department of Defense between points in the contiguous 48 states, on the one hand, and Alaska and Hawaii,

(11796, 11797)

on the other hand, shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

(2) Nothing in this certificate shall be construed as authorizing air transportation within the State of Alaska.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

11797

This certificate shall be effective on May 13, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-23350), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authorization to operate inclusive tour charters in accordance with the provisions of Part 378 of the Special Regulations shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

11798

Issued pursuant to
Order No. E-23350

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

SATURN AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

> Between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

> (1) Charter services performed by the holder for the Department of Defense between points in the contiguous 48 states, on the one hand, and Alaska and Hawaii, on the other hand, shall be furnished at the rates and

(11798, 11799)

compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

(2) Nothing in this certificate shall be construed as authorizing air transportation within the State of Alaska.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

11799

This certificate shall be effective on May 13, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-23350), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authorization to operate inclusive tour charters in accordance with the provisions of Part 378 of the Special Regulations shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

11800

Issued pursuant to
Order No. E-23350

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

SOUTHERN AIR TRANSPORT, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

> Between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

> (1) Charter services performed by the holder for the Department of Defense between points in the contiguous 48 states, on the one hand, and Alaska and Hawaii, on the other hand, shall be furnished at the rates and

(11800, 11801)

compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

(2) Nothing in this certificate shall be construed as authorizing air transportation within the State of Alaska.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

11801

This certificate shall be effective on May 13, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-23350), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authorization to operate inclusive tour charters in accordance with the provisions of Part 378 of the Special Regulations shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

11802

Issued pursuant to
Order No. E-23350

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

TRANS INTERNATIONAL AIRLINES, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

> Between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

> (1) Charter services performed by the holder for the Department of Defense between points in the contiguous 48 states, on the one hand, and Alaska and Hawaii, on the other hand, shall be furnished at the

rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

(2) Nothing in this certificate shall be construed as authorizing air transportation within the State of Alaska.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

11803

This certificate shall be effective on May 13, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-23350), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authorization to operate inclusive tour charters in accordance with the provisions of Part 378 of the Special Regulations shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

11804

Issued pursuant to
Order No. E-23350

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

WORLD AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

> Between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

> (1) Charter services performed by the holder for the Department of Defense between points in the contiguous 48 states, on the one hand, and Alaska and Hawaii, on the other hand, shall be furnished at the rates and

compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

(2) Nothing in this certificate shall be construed as authorizing air transportation within the State of Alaska.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

11805

This certificate shall be effective on May 13, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-23350), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authorization to operate inclusive tour charters in accordance with the provisions of Part 378 of the Special Regulations shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

11806

Issued pursuant to
Order No. E-23350

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

ZANTOP AIR TRANSPORT, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

> Between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

> (1) Charter services performed by the holder for the Department of Defense between points in the contiguous 48 states, on the one hand, and Alaska and Hawaii, on the other hand, shall be furnished at the rates and compensation computed on a basis no lower than the

basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

(2) Nothing in this certificate shall be construed as authorizing air transportation within the State of Alaska.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

11807

This certificate shall be effective on May 13, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-23350), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authorization to operate inclusive tour charters in accordance with the provisions of Part 378 of the Special Regulations shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

11808

Regulation No. SPR-14

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Special Regulations
Enactment of Part 378
Effective: May 13, 1966
Adopted: March 11, 1966

PART 378—INCLUSIVE TOURS BY SUPPLEMENTAL AIR CARRIERS AND TOUR OPERATORS

By Notice of Proposed Rule Making, SPDR-6, dated January 5, 1965, and published in 30 F. R. 281, the Board gave notice that it had under consideration (1) the amendment of the interim certificates and interim operating authorizations of supplemental air carriers who the Board finds qualified to perform all-expense-paid (inclusive) tours in interstate and overseas air transportation, and (2) the promulgation of a new Part 378 of the Board's Special Regulations to authorize, subject to the conditions provided therein, inclusive tours by tour operators with the air transportation portion thereof provided by the supplemental air carriers. In response to this notice, comments were submitted by twelve trunkline air carriers,[1] three local

[1] A joint comment was filed by American Airlines, Braniff Airways, Continental Air Lines, Delta Air Lines, Eastern Air Lines, National Airlines, Northwest Airlines, Pan American World Airways, Trans World Airlines, United Air Lines, and Western Air Lines. In addition, Northwest Airlines filed a supplemental comment and Northeast Airlines submitted a separate comment.

service carriers,[2] three other route carriers,[3] twelve supplemental carriers,[4] one foreign air carrier,[5] seven travel agencies (including travel agents' associations),[6] four labor unions,[7] six government agencies,[8] and two private Hawaiian associations.[9] In addition, reply comments were filed by eleven trunkline carriers,[10] eight supplemental carriers,[11]

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[2] Bonanza Air Lines, Lake Central Airlines, and Trans-Texas Airways.

[3] Aloha Airlines, Hawaiian Airlines, and Trans Carribean Airways.

[4] AAXICO Airlines, American Flyers Airline, Capitol Airways, Modern Air Transport, Overseas National Airways (ONA), Purdue Aeronautics, Saturn Airways, Trans International Airlines (TIA), Vance Roberts, World Airways and Zantop Air Transport. A comment was also filed by Holiday Airways, a supplemental carrier which, unlike the others, lacked interim operating authority.

[5] Japan Air Lines.

[6] American Society of Travel Agents (ASTA), Camino Tours; Creative Tour Operators Association (CTOA), Fugazy Travel Bureau, Happiness Tours, Lafayette Travel Service, and Pan American Tours.

[7] Master Executive Councils of Pilots of Eastern Air Lines, etc.; United Public Workers of Honolulu; Hotel, Restaurant Employees and Bartenders Union (Local No. 5, Honolulu); and International Association of Machinists (Honolulu Lodge).

[8] Port of New York Authority; Board of Supervisors of County of Maui, Hawaii; Board of Supervisors of County of Hawaii, Hawaii; Senate and House of the State of Hawaii; Council of City and County of Honolulu; and Department of Attorney General, State of Hawaii.

[9] Hawaii Hotel Association and Hawaii Restaurant Association.

[10] A joint reply by the same carriers which filed a joint comment (see footnote 1, *supra*).

[11] The same supplementals which filed comments, minus Modern, Purdue, Zantop and Holiday (see footnote 3, *supra*).

one foreign air carrier,[12] two travel agents' associations,[13] one union,[14] and one government agency.[15]

11810

After further consideration, the Board decided (Supplemental Notice of Proposed Rule Making, SPDR-6A, April 27, 1965, 30 F. R. 6119) to defer further action in the rule making proceeding until after issuance of the examiner's Recommended Decision in the *Supplemental Air Service Proceeding,* Docket 13795 *et al.*

By Supplemental Notice of Proposed Rule Making, SPDR-6B, dated October 11, 1965, and published in 30 F. R. 13077, the Board amended proposed Part 378 to correspond with the scope of inclusive tour authority which might be granted as a result of the *Supplemental* case and/or the *Reopened Transatlantic Charter Investigation (All-expense Tour Phase),* Docket 11908, *et al.* The amendments primarily involved (1) making the period of tour operator authorization coextensive with that awarded to supplemental carriers, and (2) extending the regulatory terms to include inclusive tours in foreign, as well as interstate and overseas, air transportation. Comments with respect to the amendments were filed by eleven trunkline air carriers,[16] three supplemental carriers,[17] and two travel agents (or associations).[18]

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[12] Japan Air Lines.

[13] ASTA and CTOA.

[14] Master Executive Councils of Pilots of Eastern Air Lines, etc.

[15] St. Louis Airport Commission.

[16] Again, a joint comment by the carriers listed in footnote 1.

[17] TIA, World and Zantop.

[18] CTOA and American International Travel Service.

(11810, 11811)

Interested persons have been afforded an opportunity to participate in the making of this rule, and due consideration has been given to all relevant matter presented. In view of the interrelationship between the rule making and

11811

the *Supplemental* case with respect to the inclusive tour question, and because Part 378 is being issued in conjunction with the decision in the domestic phase of the latter proceeding, the discussion of the regulatory provisions as adopted, which normally accompanies the rule, is contained in the *Supplemental* opinion.[19] For the reasons set forth therein, we have decided to adopt the attached new Part 378 of the Board's Special Regulations.

Accordingly, the Civil Aeronautics Board hereby amends the Special Regulations, effective May 13, 1966, by adding thereto a new Part 378 (14 CFR Part 378) to read as follows:

Part 378—Inclusive Tours by Supplemental Air Carriers and Tour Operators

Subpart A—General Provisions

Sec.

378.1 Applicability.
378.2 Definitions.
378.3 Exemption.
378.4 Approval of certain interlocking relationships.
378.5 Effect of exemption on antitrust laws.
378.6 Suspension of exemption authority.

[19] Order E-23350, March 11, 1966, pp. 16-21.

SUBPART B—CONDITIONS AND LIMITATIONS

Sec.
378.10 Requirement of a Statement of Authorization.
378.11 Procedure for obtaining a Statement of Authorization.
378.12 Statement of Tour Operator's Qualifications.
378.13 Tour Prospectus.
378.14 Charter contract.
378.15 Tariffs to be filed for charter trips.
378.16 Surety bond.
378.17 Contract between tour operators and tour participants.
378.18 Procedure applicable to periods on or after January 1, 1968.

11812

SUBPART C—POST TOUR REPORTING REQUIREMENTS

378.20 Post tour reporting.

SUBPART D—MISCELLANEOUS

378.30 Waiver.
378.31 Enforcement.

Authority: Sections 101(3), 204(a), 401, 409 and 414 of the Federal Aviation Act of 1958, as amended (72 Stat. 737; 49 U. S. C. 1301; 72 Stat. 743; 49 U. S. C. 1324; 72 Stat. 754 as amended by 76 Stat. 143; 49 U. S. C. 1371; 72 Stat. 768; 49 U. S. C. 1379; 72 Stat. 770; 49 U. S. C. 1384) and section 7 of Public Law 87-528 (76 Stat. 146; 49 U. S. C. 1371).

(11812, 11813)

SUBPART A—GENERAL PROVISIONS

§378.1 *Applicability.*

This part establishes the terms and conditions governing the furnishing of inclusive tours in interstate air transportation by supplemental air carriers and tour operators. This part also relieves tour operators from various provisions of the Act and the Board's regulations for the purpose of enabling them to provide inclusive tours to members of the general public utilizing aircraft chartered from supplemental air carriers. The provisions of this regulation shall not be construed as limiting any other authority to engage in air transportation issued by the Board. Nothing contained in this part shall be construed as repealing or amending any provision of any of the Board's regulations, unless the context so requires.

§378.2 *Definitions.*

As used in this part, unless the context otherwise requires—

(a) "Inclusive tour charter" means the charter of an entire aircraft by a tour operator for the carriage by a supplemental air carrier of persons traveling in interstate air transportation on inclusive tours.

11813

(b) "Inclusive tour" means a round-trip tour which combines air transportation pursuant to an inclusive tour charter and land services, and which meets all of the following requirements:

(1) A minimum of seven (7) days must elapse between departure and return;

(2) The land portion of the tour must provide overnight hotel accommodations at a minimum of three places other than the point of origin, such places to be no less than 50 air miles from each other;

(3) The tour price shall include, at a minimum, all hotel accommodations and necessary air or surface transportation between all places on the itinerary including transportation to and from air and surface carrier terminals utilized at such places other than the point of origin;

(4) The charge to the passengers for the tour, as set forth in the tour prospectus, shall be not less than 110 per cent of any available fare or fares charged by a certificated route air carrier or combination of such carriers (including charge for stopovers) for individually ticketed service on the circle route beginning at the point of origin, to the various points where stopovers are made, and return to the point of origin, provided that the tour shall be subject to the terms and conditions which are applicable to such fare or fares, as set forth in the tariff of the certificated route carrier or carriers. For purposes of this provision, the term "available fare" includes promotional or discount fares, such as family fares, children's fares, excursion fares, fares applicable to special classes of persons, group fares, etc. Where similar promotional or discount fares are offered on both jet and propeller aircraft, the avail-

able fare shall be that charged for jet service. Where no regularly scheduled service is provided between the points

involved, the available fare shall be based on the fares to the nearest point served by a certificated route air carrier; and

(5) An aircraft under charter to one tour operator may carry a maximum of three tour groups, provided that if more than one group is carried each of the groups shall consist of 40 or more tour participants.

(c) An "inclusive tour group" means an aggregate of persons who are assembled by a tour operator for the purpose of participation as a single unit in an inclusive tour.

(d) "Tour operator" means any person (other than a supplemental air carrier) authorized hereunder to engage in the formation of groups for transportation on inclusive tours.

(e) "Tour participant" means a member of the inclusive tour group.

(f) "Supplemental air carrier" means a supplemental air carrier as defined in §200.8 of the Board's Economic Regulations and authorized under section 7 of Public Law 87-528 or section 401(d) (3) of the Act to perform inclusive tour charters.

(g) "Tour price" means the total amount of money paid by the tour participant to the tour operator for the inclusive tour.

11815

§378.3 *Exemption.*

Subject to the provisions of this part and the conditions imposed, tour operators are hereby relieved from the fol-

lowing provisions of Title IV of the Federal Aviation Act of 1958, as amended, to the extent necessary to permit them to provide inclusive tours:

Section 401
Section 403
Section 404(a), except the requirement to provide safe and adequate service, equipment and facilities in connection with tours operated hereunder.
Section 405(b)
Section 407(b) and (c)
Sections 408(a) and 409, except control or interlocking relationships with direct air carriers
Section 412

§378.4 *Approval of certain interlocking relationships.*

To the extent that any officer or director of a tour operator would be in violation of any of the provisions of section 409(a)(3) and (6) by participating in interlocking relationships covered by the exemption granted by §378.3, such participation is hereby approved by the Board.

§378.5 *Effect of exemption on antitrust laws.*

The relief granted by §§ 378.3 and 378.4 from sections 408, 409 and 412 of the Act shall not constitute an order under such sections within the meaning of section 414 of the Act, and shall not confer any immunity or relief from operation of the "antitrust laws" or any other statute (except the Act) with respect to any transaction, interlocking relationship, or agreement otherwise within the purview of such sections.

§378.6 *Suspension of exemption authority.*

The Board reserves the power to suspend the exemption authority of any tour operator, without hearing, if it finds that such action is necessary in order to protect the rights of the traveling public.

SUBPART B—CONDITIONS AND LIMITATIONS

§378.10 *Requirement of a Statement of Authorization.*

No inclusive tour or series of tours scheduled to commence on or before December 31, 1967, shall be operated, nor shall any tour operator sell or offer to sell, solicit, or advertise such tour or tours, unless there shall be in effect a Statement of Authorization issued by the Board authorizing the specific tour or series of tours.

§378.11 *Procedure for obtaining a Statement of Authorization.*

(a) Applications for a Statement of Authorization shall be filed with the Civil Aeronautics Board (Director, Bureau of Operating Rights) jointly by the supplemental air carrier and the prospective tour operator at least 90 days in advance of the date of commencement of the proposed tour or series of tours. If a series of tours is to be operated for one tour operator pursuant to one charter contract, the application may cover the entire series, provided that the elapsed time between the commencement of the first tour and the completion of the last tour shall not be more than 180 days. Late filing of the application will not be permitted except for good cause shown.

(b) The application shall be verified, in the form set forth in the Appendix, by a duly authorized officer of both the

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supplemental air carrier and the tour operator and shall include the Statement of Tour Operator's Qualifications and the Tour Prospectus. In the event of any change in the facts as reflected in the application, an amended application shall be filed no later than five (5) days following such change.

(c) Copies of the application shall be served upon each direct air carrier certificated to provide passenger service between any of the points involved in the proposed tour or tours, and on such other persons as the Board may require, and proof of such service shall accompany the application as provided in §302.8 of this chapter. Answers to the application may be filed by interested persons no later than ten days thereafter and shall conform to the requirements of §302.1022(a) and (b) of this chapter.

(d) If the Board finds that the proposed tour or tours comply with the requirements of this regulation and that the tour operator applicant is properly qualified, it will issue a Statement of Authorization for the conduct of the tour or tours set forth in the application. Among the factors which the Board will consider in determining whether the tour operator applicant is properly qualified to engage in the proposed tour operation are its financial resources, prior experience in the transportation business, and any other information bearing upon the ability of the applicant to perform successfully the proposed operations. The Statement of Authorization may be conditioned or limited by the

Board in order to assure compliance with the requirements of this regulation.

(e) Deviations from the tour or tours authorized by the Board may not be made without Board permission except where they are compelled by circumstances beyond the control of the carrier or tour operator and there is insufficient time to request Board permission therefor.

§378.12 *Statement of Tour Operator's Qualifications.*

The Statement of Tour Operator's Qualifications shall be in the form set forth in the Appendix. A tour operator who has filed a Statement of Tour Operator's Qualifications

in connection with one application may, with respect to subsequent applications, file a verified statement to the effect that the facts contained in his previously filed Statement of Qualifications have not changed, except as set forth in such verified statement.

§378.13 *Tour Prospectus.*

The Prospectus shall include copies of the charter contract, the contract between the tour operator and tour participants, and the tour operator's surety bond, and shall contain the following information:

(a) Name and address of the tour operator;

(b) The proposed date and time of each flight;

(c) Equipment to be used, including the aggregate number of each type of aircraft and capacity;

(d) The tour itinerary, including hotels (name and length of stay at each), and sightseeing or other arrangements, if any;

(e) The tour price per passenger;

(f) The number of persons expected to participate in the tour;

(g) Charter price of the aircraft;

(h) The individually ticketed air fare, computed, as provided in §378.2(b)(4);

(i) Samples of solicitation material proposed by the tour operator (all sales advertising and solicitation materials employed by the tour operator shall state the name of the supplemental air carrier to be utilized).

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§378.14 *Charter contract.*

The charter contract between the tour operator and the supplemental carrier shall evidence a binding commitment on the part of the carrier to furnish the air transportation required for the tour or tours covered by the contract.

§378.15 *Tariffs to be filed for charter trips.*

No supplemental air carrier shall perform any charter trips for inclusive tours unless such air carrier shall have on file with the Board a currently effective tariff showing all rates, fares, and charges for such charter trips and showing the rules, regulations, practices, and services in connection with such transportation.

(11819, 11820)

§378.16 *Surety bond.*

The tour operator shall furnish a surety bond in an amount of not less than twice the amount of the charter price for the air transportation to be furnished in connection with such tour: *Provided, however,* That the liability of the surety to any tour participant shall not exceed the tour price. Such bond shall insure the financial responsibility of the tour operator and the supplying of the transportation and all other accommodations, services, and facilities in accordance with the contract between the tour operator and the tour participants, and shall be in the form set forth in the Appendix. Such bond shall be issued by a reputable and financially responsible bonding or surety company which is legally authorized to issue bonds of that type in the state in which the tour originates. For purposes of this section, the term "state" includes any territory or possession of the United States, or the District of Columbia. The Board will consider that a bonding or surety

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company is *prima facie* qualified under this section if such company's surety bonds are accepted by the Interstate Commerce Commission under 49 CFR §174.8, and if such company is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better. If the bond does not comply with the requirements of this section, or for any reason fails to provide satisfactory or adequate protection for the public, the Board will notify the supplemental air carrier and the tour operator, by registered or certified mail, stating the deficiencies of the bond. Unless such deficiencies are corrected within the time set

forth in such notification, the subject tour or tours shall in no event be operated.

§378.17 *Contract between tour operators and tour participants.*

Where each participant in a tour receives the same accommodations, land tours, etc., the contract between the tour operator and the tour participants shall be the same. Contracts between tour operators and tour participants shall include provisions concerning the following matters:

(a) Method of payment, e.g., installment payments;

(b) Refunds in the event of the tour's cancellation or the passenger's change in plans;

(c) Carriers' liability limitations for passengers' baggage;

(d) Aircraft equipment substitutions;

(e) Seating accommodations; and

(f) Non-performance of tour because of insufficient number of participants.

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§378.18 *Procedure applicable to periods on or after January 1, 1968.*

(a) No inclusive tour or series of tours scheduled to commence on or after January 1, 1968, shall be operated, nor shall any tour operator sell or offer to sell, solicit or advertise such tour or tours, unless there is on file with the Board a Tour Prospectus satisfying the requirements of §378.13. If a series of tours is to be operated for one tour

operator pursuant to one charter contract, the Prospectus may cover the entire series, provided the elapsed time between the commencement of the first tour and the completion of the last tour shall not be more than 180 days. The Tour Prospectus shall be verified by a duly authorized officer of both the supplemental air carrier and the tour operator and shall be filed at least 60 days before the commencement of the tour or tours. Late filing of the Prospectus will not be permitted except for good cause shown.

(b) In the event of any change in the facts as reflected in the Prospectus, an amended Prospectus shall be filed no later than five (5) days following such change. Deviations from the Tour Prospectus, or the amended Prospectus, may not be made except where they are compelled by circumstances beyond the control of the carrier or tour operator and there is insufficient time to file an amended Prospectus.

SUBPART C—POST TOUR REPORTING REQUIREMENTS

§378.20 *Post tour reporting.*

(a) Within 30 days after completion of a tour or in the case of a series of tours, the last of the series, the supple-

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mental air carrier and tour operator shall jointly file with the Board (Supplementary Services Division, Bureau of Operating Rights) a post tour report. This report shall be verified by both the supplemental air carrier and the tour operator and shall indicate whether or not the tours as authorized hereunder were, in fact, performed. To the

extent that the operations differed from those authorized under §378.11 or described in the Prospectus filed under §378.18, such differences shall be fully detailed including the reasons therefor. However, the making of such explanation shall not of itself operate as authority for or excuse of any such deviation.

(b) The supplemental air carrier shall promptly notify the Board regarding any tours covered by a Statement of Authorization, or a Tour Prospectus filed under §378.18, that are later canceled.

SUBPART D—MISCELLANEOUS

§378.30 *Waiver.*

A waiver of any of the provisions of this regulation may be granted by the Board upon its own initiative, or upon the submission by a supplemental air carrier of a written request therefor, provided that such a waiver is in the public interest and it appears to the Board that special or unusual circumstances warrant a departure from the provisions set forth herein.

§378.31 *Enforcement.*

In case of any violation of the provisions of the Act, or this part, or any other rule, regulation, or order issued

under the Act, the violator may be subject to a proceeding pursuant to sections 1002 and 1007 of the Act before the Board or a United States District Court, as the case may be, to compel compliance therewith, to civil penalties pur-

(11823)

suant to the provisions of section 901(a) of the Act, or, in the case of willful violation, to criminal penalties pursuant to the provisions of section 902(a) of the Act; or other lawful sanctions.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

Note: The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

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APPENDIX

VERIFICATION OF APPLICATION UNDER PART 378 OF THE SPECIAL REGULATIONS OF THE CIVIL AERONAUTICS BOARD (14 CFR PART 378)

STATE OF .....)
COUNTY OF .....) SS:

..... and .....
(Name) (Name)

being duly sworn, hereby separately depose and say that I have carefully examined the attached application for a Statement of Authorization to engage in inclusive tour charters, and each of the documents comprising such application (Statement of Tour Operator's Qualifications and Tour Prospectus) and that to the best of my knowledge and belief the information contained therein is true and correct.

.....	.....
(Signature and title of duly authorized official of the supplemental air carrier)	(Signature and title of duly authorized official of the tour operator)
Sworn to before me this day, the ..... of ....., 19....	Sworn to before me this day, the ..... of ....., 19....
.....	.....
(Signature of person administering oath. Also, set forth here below the name, address and authority of such person)	(Signature of person administering oath. Also set forth here below the name, address and authority of such person)

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STATEMENT OF TOUR OPERATOR'S QUALIFICATIONS UNDER PART 378 OF THE SPECIAL REGULATIONS OF THE CIVIL AERONAUTICS BOARD (14 CFR PART 378)

1. Identification of tour operator applicant:

   (a) Name: .....

   (b) Trade names: .....

   (c) Name in which applicant wishes to be issued the Statement of Authorization: .....

2. Address of principal office: .....

3. Mailing address: .....

4. Form of organization:

   [ ] Corporation [ ] Sole Proprietorship
   [ ] Partnership [ ] Other (Specify):

   .....

5. State in which incorporated or under whose laws company is authorized to operate: .....

6. Date of incorporation or formation of company: .....

   .....

7. Full name, address, title, citizenship (country) and percent of stock or other interes' of officers, owners, or members of applicant, and owners of more than 5% of outstanding stock of corporation or owners of more than 5% of company if other than corporation: .....

   .....

   .....

(11825, 11826)

8. Full name, address, citizenship (country) and percent of stock or other interest of directors of applicant: .....

.....

.....

9. Percent of voting interest owned or controlled by citizens of the United States or one of its possessions:

[ ] 75% or more [ ] Less than 75%

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10. If more than 5 percent of applicant's stock is held by a corporation, percent of voting interest in such corporation owned or controlled by citizens of the United States or one of its possessions:

[ ] 75% or more [ ] Less than 75%

11. Description of current business activities and length of time engaged therein: .....

.....

.....

12. Description of previous business experience related to transportation activities and dates engaged therein:

.....

.....

.....

13. Kind of operating authority (such as broker, surface or air freight forwarder, motor carrier, ocean freight forwarder, etc.) issued to applicant by the United States Government, including (a) permit, registration

(11826, 11827)

or certificate number, or other evidence of registration, (b) issuing agency, and (c) effective dates of license held: .....

.....

.....

.....

14. Has any operating authority or registration included in item 13, above, been revoked, canceled, suspended or otherwise terminated?

[ ] Yes [ ] No

If "yes", give reasons: .....

.....

15. Description of previous business experience of applicant's officers, managers and key personnel in air transportation or other transportation:

.....

.....

.....

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16. State any additional information or comments as desired in support of the application: .....

.....

17. Give a brief account of any arrangement through which applicant will have available to it the financial resources and facilities of other companies or individuals: .....

.....

.....

18. Submit with this statement, in duplicate, the most recent balance sheet of applicant. Use footnotes to *explain items fully,* in order to avoid time-consuming correspondence for explanation of balance sheet entries.

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TOUR OPERATOR'S SURETY BOND
UNDER PART 378 OF THE SPECIAL REGULATIONS OF THE CIVIL AERONAUTICS BOARD (14 CFR PART 378)

KNOW ALL MEN BY THESE PRESENTS, That we ....., of ....., ... as PRINCIPAL (hereinafter called Principal), and .....
(Name of tour operator) (City) (State) (Name of Surety)
a corporation created and existing under the laws of the State of ..... as SURETY (hereinafter called Surety) are held and firmly bound unto the United States of America in the sum of ....., for
(State) (see §378.16 of Part 378)
which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal intends to become a tour operator pursuant to the provisions of Part 378 of the Board's Special Regulations and other rules and regulations of the Board relating to insurance or other security for the protection of tour participants, and has elected to file with the Civil Aeronautics Board such a bond as will insure finan-

(11828, 11829)

cial responsibility and the supplying of transportation and other services subject to Part 378 of the Board's Special Regulations in accordance with contracts, agreements, or arrangements therefor, and

WHEREAS, this bond is written to assure compliance by the Principal as an authorized tour operator with Part 378 of the Board's Special Regulations, and other rules and

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regulations of the Board relating to insurance or other security for the protection of tour participants, and shall inure to the benefit of any and all tour participants to whom the Principal may be held legally liable for any of the damages herein described.

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall pay or cause to be paid to tour participants any sum or sums for which the Principal may be held legally liable by reason of the Principal's failure faithfully to perform, fulfill, and carry out all contracts, agreements, and arrangements made by the Principal while this bond is in effect for the supplying of transportation and other services pursuant to and in accordance with the provisions of Part 378 of the Board's Special Regulations, then this obligation shall be void, otherwise to remain in full force and effect.

The liability of the Surety with respect to any tour participant shall not exceed the tour price (as defined in Part 378 of the Board's Special Regulations) paid by or on behalf of such participant.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty of the bond, but in no event shall the Surety's obligation hereunder exceed the amount of said penalty. The Surety agrees to furnish written notice to the Civil Aeronautics Board forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond.

This bond is effective the ..... day of ....., 19....., 12:01 a.m., standard time, at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the

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Surety may at any time terminate this bond by written notice to the Civil Aeronautics Board at its office in Washington, D. C., such termination to become effective thirty (30) days after actual receipt of said notice by the Board. The Surety shall not be liable hereunder for the payment of any of the damages hereinbefore described which arise as the result of any contracts, agreements, undertakings, or arrangements made by the Principal for the supplying of transportation and other services after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety hereunder for the payment of any such damages arising as the result of contracts, agreements, or arrangements made by the Principal for the supplying of transportation and other services prior to the date such termination becomes effective.

(11830)

IN WITNESS WHEREOF, the said Principal and Surety have executed this instrument on the ..... day of ...., 19 .....

PRINCIPAL	SURETY
Name	Name .....(SEAL)
By ..... (Signature and Title)	By ..... (Signature and Title)
Witness	Witness .....

Only corporations may qualify to act as surety and they must establish to satisfaction of the Civil Aeronautics Board legal authority to assume the obligations of surety and financial ability to discharge them.

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Regulation No. ER-454

UNITED STATES OF AMERICA.
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Economic Regulations
Revision of Part 208
Effective: May 13, 1966
Adopted: March 11, 1966

PART 208—TERMS, CONDITIONS AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN SUPPLEMENTAL AIR TRANSPORTATION

REVISION OF PART

Present Part 208, as amended, contains principally various terms, conditions, and limitations on the operating authority of supplemental air carriers. Such terms, conditions, and limitations attach to certificates issued pursuant to section 401(d)(3) of the Act, to special operating authorizations issued under section 417 of the Act and to interim certificates or authorizations issued pursuant to section 7 of Public Law 87-528.

In its decision in the domestic phase of the *Supplemental Air Service Proceeding,* Docket 13795 *et al.,* dated March 11, 1966, Order E-23350, the Board granted certificates of public convenience and necessity to certain supplemental air carriers under section 401(d)(3) of the Act to engage in supplemental air transportation with respect to persons

(11831, 11832)

and property between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia for an indefinite period;[1] authorized split charters; and provided that the authority granted would be subject to appropriate terms, conditions and limitations.[2] Consequently, we have determined to amend Part 208 to reflect

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the authorization of split charters and to set forth those terms, conditions and limitations which also will govern the conduct of certificated supplemental air transportation (other than transatlantic supplemental air transportation and inclusive tour charters).

The issue of the appropriate terms, conditions and limitations which the Board should adopt to govern certificated supplemental air transportation, was embraced by and litigated in this proceeding. Thus, the Board's consolidation order (E-20573, March 13, 1964) indicated that the issues would include a determination of what limitations, if any, should be imposed by the Board to assure that the service rendered pursuant to any certificate to be issued would be limited to supplemental air transportation as defined in the Act. The examiner, after considering the evidence, contentions and briefs of the parties, attached to his recommended decision (Appendix F) a set of comprehensive regulations which he recommended that the Board adopt to implement the decision, including a revised Part 208

[1] Except with respect to the authorization to operate inclusive tour charters which is for five years.

[2] The authority to operate inclusive tour charters is subject to the terms, conditions and limitations set forth in new Part 378 issued concurrently with Board Order E-23350, dated March 11, 1966.

setting forth the terms, conditions and limitations for the conduct of certificated supplemental air transportation. We have considered the examiner's proposed regulations and the evidence of record and have determined to adopt most of his recommendations (with the exception of those provisions pertaining to inclusive tour charter authority which we are issuing as a separate regulation). This revised Part 208 will bring together in one regulation all of the terms, conditions and limitations which we deem appropriate to govern supplemental air transportation. Although the regulation we are issuing as a part of Board Order E-23350 differs to some extent from that proposed

by the examiner, the differences are largely a matter of form.[3] Moreover, the provisions of this revised Part 208 are, for the most part, reflected in existing Part 208, in the interim certificates of the supplemental air carriers and, with appropriate adaptations and modifications, in existing Part 295, the regulation which pertains to transatlantic supplemental air transportation.

In addition, the provisions of revised Part 208 were the subject of intensive examination and argument by the parties. The interested parties have, therefore, been afforded a full opportunity to comment on the substance of this rule in the above-described proceeding.

In view of the foregoing, the Board finds that further notice and public procedure hereon are unnecessary and not in the public interest. Accordingly, the Civil Aero-

[3] See p. 28 of the Board's opinion which discusses the instant Part 208 revision.

nautics Board hereby reissues Part 208 of the Economic Regulations (14 CFR Part 208), effective May 13, 1966, as follows:

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PART 208—TERMS, CONDITIONS AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN SUPPLEMENTAL AIR TRANSPORTATION

SUBPART A—GENERAL PROVISIONS

Sec.
208.1 Applicability.
208.2 Separability.
208.3 Definitions.
208.3a Waiver.
208.4 Passenger names and addresses.

Liability Insurance Requirements

208.10 Applicability of liability insurance requirements.
208.11 Minimum limits of liability.
208.12 Terms and conditions of insurance coverage.
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Minimum Extent of Service

208.25 Minimum service requirements.

Operations and Tariffs

208.30 Prohibited advertising.
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208.31a Written agreements with ticket agents.

Sec.
208.32 Tariffs and terms of service.
208.33 Flight delays and substitute air transportation.

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208.33a Substitution or subcontracting.
208.34 Records and record retention.
208.35 Payments, gratuities and donations.

SUBPART B—PROVISIONS RELATING TO MILITARY CHARTERS

208.100 Applicability of subpart.
208.101 Minimum rates and compensation for air transportation performed for the military establishment.
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SUBPART C—PROVISIONS RELATING TO PRO RATA CHARTERS

208.200 Applicability of subpart.

Requirements Relating to Air Carriers

208.200a Solicitation and formation of a chartering group.
208.201 Pre-trip notification.
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Requirements Relating to Travel Agents

208.203 Prohibition against double compensation.

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208.204 Statement of supporting information.

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Requirements Relating to the Chartering Organization

Sec.

208.210 Solicitation of charter participants.
208.211 Passengers on charter flights.
208.212 Participation of immediate families in charter flights.
208.213 Charter costs.
208.214 Statements of charges.
208.215 Passenger manifests.
208.216 Statement of supporting information.

SUBPART D—PROVISIONS RELATING TO SINGLE ENTITY CHARTERS

208.300 Applicability of subpart.
208.301 Tariffs to be on file.
208.302 Terms of service.
208.303 Commissions paid to travel agents.

SUBPART E—PROVISIONS RELATING TO MIXED CHARTERS

208.400 Applicable rules.

Authority: §§208.1 to 208.400 issued under sec. 204(a), 72 Stat. 743; 49 U. S. C. 1324. Interpret or apply secs. 401(d)(3), 401(n), 407 and 417 of the Federal Aviation Act, 76 Stat. 143; 49 U. S. C. 1371(d)(3); 76 Stat. 144; 49 U. S. C. 1371(n); 72 Stat. 766; 49 U. S. C. 1377; 76 Stat. 145; 49 U. S. C. 1387; and sec. 7 of Public Law 87-528, 76 Stat. 146.

SUBPART A—GENERAL PROVISIONS

§208.1 *Applicability.*

This part contains terms, conditions, and limitations on the operating authority of supplemental air carriers, including substantive regulations implementing paragraphs (1), (2), (3) of section 401(n) of the Act. The requirements of this part shall constitute terms, conditions, and

limitations attached to certificates issued pursuant to section 401(d)(3) of the Act. The requirements shall also attach to special operating authorizations issued under section 417 of the Act, and to interim certificates or authorizations issued pursuant to section 7 of Public Law 87-528.

§208.2 *Separability.*

If any provision of this part or the application thereof to any air transportation, person, class of persons, or circumstance is held invalid, neither the remainder of the part nor the application of such provision to other air transportation, persons, classes of persons, or circumstances shall be affected thereby.

§208.3 *Definitions.*

For the purposes of this part:

(a) "Filing" shall mean filing in compliance with §302.3(a) of this chapter except that provisions in this part which require filing with Board offices other than the Docket Section shall be controlling.

(11837, 11838, 11839)

(b) "Supplemental air carrier" shall mean any air carrier holding a certificate issued under section 401(d)(3) of the Federal Aviation Act of 1958, as amended, or a special operating authorization issued under section 417 of the Federal Aviation Act, or operating authority issued pursuant to section 7 of Public Law 87-528.

(c) "Supplemental air transportation" (other than operations subject to Part 295 of this subchapter) means charter flights in air transportation performed pursuant to (1) an interim certificate or authorization issued under section 7 of Public Law 87-528, or (2) a certificate of public convenience and necessity issued under section 401(d)(3) of the Act authorizing the holder to engage in supple-

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mental air transportation of persons and property between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia (exclusive of air transportation within the State of Alaska).

(d) "Agreement" means any oral or written agreement, contract, understanding, or arrangement, and any amendment, revision, modification, renewal, extension, cancellation or termination thereof.

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(e) "Cargo agent" means any person (other than a supplemental air carrier or one of its *bona fide* regular employees or an indirect air carrier lawfully engaged in air transportation under authority conferred by any applicable part of the Economic Regulations of the Board) who

for compensation or profit (i) solicits, obtains, receives, or furnishes directly or indirectly property or consolidated shipments of property for transportation upon the aircraft of supplemental air carriers; or (ii) procures or arranges for air transportation of property or consolidated shipments of property upon aircraft of a supplemental air carrier by charter, lease, or any other arrangement.

(f) Reserved.

(g) "Ticket agent" means any person (other than a supplemental air carrier or one of its *bona fide* regular employees) who for compensation or profit (i) solicits, obtains, receives, or furnishes directly or indirectly passengers or groups of passengers for transportation upon the aircraft of a supplemental air carrier; or (ii) procures or arranges for air transportation of passengers or groups of passengers upon aircraft of a supplemental air carrier by charter, lease, or any other arrangement.

(h) "Pro rata charter" means a charter, the cost of which is divided among the passengers transported.

(i) "Single entity charter" means a charter, the cost of which is borne by the charterer and not by individual passengers, directly or indirectly.

(j) "Mixed charter" means a charter, the cost of which is borne, or pursuant to contract may be borne, partly by the charter participants and partly by the charterer.

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(k) "Person" means any individual, firm, association, partnership, or corporation.

(11840)

(l) "Travel agent" means any person engaged in the formation of groups for transportation or in the solicitation or sale of transportation services.

(m) "Charter group" means that body of individuals who shall actually participate in the charter flight.

(n) "Charter organization" means that organization, group or other entity from whose members (and their immediate families) a charter group is derived.

(o) "Immediate family" means only the following persons who are living in the household of a member of a charter organization, namely, the spouse, dependent children, and parents, of such member.

(p) "Solicitation of the general public" means:

(1) A solicitation going beyond the bona fide members of an organization (and their immediate families). This includes air transportation services offered by an air carrier under circumstances in which the services are advertised in mass media, whether or not the advertisement is addressed to members of a specific organization, and regardless of who places or pays for the advertising. Mass media shall be deemed to include radio and television, and newspapers and magazines. Advertising in such media as newsletters or periodicals of membership organizations, industrial plant newsletters, college radio stations and college newspapers shall not be considered advertising in mass media to the extent that

(i) The advertising is placed in a medium of communication circulated mainly to members of an organization that would be eligible to obtain charter service, and

(ii) The advertising states that the charter is open only to members of the organization referred to in subdivision (i) of this subparagraph, or only to members of a subgroup thereof. In this context, a subgroup shall be any group with membership drawn primarily from members of the organization referred to in subdivision (i) of this subparagraph: *Provided,* That this paragraph shall not be construed as prohibiting air carrier advertising which offers charter services to bona fide organizations, without reference to a particular organization or flight.

(2) The solicitation, without limitation, of the members of an organization so constituted as to ease of admission to membership, and nature of membership, as to be in substance more in the nature of a segment of the public than a private entity.

(q) "Bona fide members" means those members of a charter organization who have not joined the organization merely to participate in the charter as the result of solicitation directed to the general public. Presumptively persons are not bona fide members of a charter organization unless they are members at the time the organization first gives notice to its members of firm charter plans. This presumption will not be applicable in the case of charters composed of (1) students and educational staff of a single school, and immediate families thereof, (2) employees of a single Government agency, industrial plant, or mercantile establishment, and immediate families thereof, or (3) participants in a study group. In the case of all other

charters, rebuttal to this presumption may be offered for the Board's consideration by request for waiver.

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(r) Reserved.

(s) "Charter flight" (other than transportation pursuant to authority conferred under section 7 of Public Law 87-528) means

(1) air transportation of persons and/or property pursuant to contracts with the Department of Defense where the entire capacity of one or more aircraft has been engaged by the Department, and

(2) air transportation performed by a direct air carrier on a time, mileage or trip basis where

(i) the entire capacity of one or more aircraft has been engaged for the movement of persons and property—

(*a*) By a person for his own use (including a direct air carrier when such aircraft is engaged solely for the transportation of company personnel or company property, or in cases of emergency, of commercial traffic);

(*b*) By a person (no part of whose business is the formation of groups or the consolidation of shipments for transportation or the solicitation or sale of transportation services) for the transportation of a group of persons and/or their property, as agent or representative of such group;

(*c*) By two or more persons acting jointly for the transportation of themselves and/or their property or a group of persons and/or their property;

(*d*) By an indirect air carrier authorized by the Board to charter aircraft from such direct air carrier (see e.g., Part 378 of this chapter); or

(ii) less than the entire capacity of an aircraft has been engaged for the movement of persons and their personal baggage—

11843

(*a*) By a person for his own use (including a direct air carrier when such aircraft is engaged solely for the transportation of company personnel and their personal baggage, or in cases of emergency, of commercial passenger traffic);

(*b*) By a person (no part of whose business is the formation of groups or the consolidation of shipments for transportation or the solicitation or sale of transportation services) for the transportation of a group of persons and their personal baggage, as agent or representative of such group;

(*c*) By two or more persons acting jointly for the transportation of themselves and their personal baggage or a group of persons and their personal baggage; *Provided* that, with respect to subdivision (ii) hereof, a maximum of three groups may be chartered on one aircraft and each group shall consist of 40 or more passengers; and *Provided, further,* that subdivision (ii) hereof shall not be construed to apply to movements of property and shall not be construed to apply to the charter of less than the entire capacity of an aircraft by an indirect air carrier.

In the case of air carriers authorized pursuant to section 7 of Public Law 87-528, the term "charter flights"

(11843, 11844)

means charter trips as defined in such carriers' interim certificates or authorizations.

A supplemental air carrier may utilize any unused space for the transportation of the carrier's own personnel and property, with the consent of the charterer or charterers.

11844

(t) "Substitute service" means the performance by an air carrier of air transportation between the 48 contiguous states, on the one hand, and the state of Alaska or Hawaii, on the other hand, in planeload lots pursuant to an agreement with another air carrier to fulfill such other air carrier's contractual obligation to perform such air transportation for the Department of Defense and when the performance of such air transportation is not to take place during a period longer than three weeks.

(u) "Indirect air carrier" means any citizen of the United States who engages indirectly in air transportation, including airfreight forwarders and tour operators.

§208.3a *Waiver.*

A waiver of any of the provisions of this part may be granted by the Board upon the submission by an air carrier of a written request therefor not less than 30 days prior to the flight to which it relates provided such a waiver is in the public interest and it appears to the Board that special or unusual circumstances warrant a departure from the provisions set forth herein.

§208.4 *Passenger names and addresses.*

Each supplemental air carrier shall maintain a record of the names and addresses of all passengers transported

by it on each pro rata charter trip operated in interstate or overseas air transportation. Such record shall be re-

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tained in accordance with Part 249 except that it may be maintained at either the principal office or principal operations base of the carrier.

Liability Insurance Requirements

§208.10 *Applicability of liability insurance requirements.*

(a) No supplemental air carrier shall engage in air transportation unless such carrier has and maintains in effect liability insurance coverage evidenced by a currently effective certificate of liability insurance filed with and accepted by the Board as complying with the requirements of this part; and no supplemental carrier shall operate in air transportation any aircraft, or perform services within any geographical area, to which such insurance does not apply. "Insurance certificate," as used herein, means one or more than one certificate, evidencing one or more than one policy of aircraft liability insurance properly endorsed, issued by one or more than one insurer, which alone or in combination provides the minimum coverage prescribed in §208.11. When more than one insurer is involved in providing the minimum coverage prescribed herein, the limits and types of liability assumed by each insurer shall be clearly stated in the certificate of insurance.

11846

(b) The insurance coverage and certificate required by this part shall be obtained from a reputable and financially

responsible insurance company or association which is legally authorized to issue aircraft liability policies in one or more States of the United States or in the District of Columbia.

§208.11 *Minimum limits of liability.*

The minimum limits of liability insurance coverage maintained by a supplemental air carrier shall be as follows:

(a) Liability for bodily injury to or death of aircraft passengers: A limit for any one passenger of at least fifty thousand dollars ($50,000), and a limit for each occurrence in any one aircraft of at least an amount equal to the sum produced by multiplying fifty thousand dollars ($50,000) by seventy-five percent (75%) of the total number of passenger seats installed in the aircraft.

(b) Liability for bodily injury to or death of persons (excluding passengers): A limit of at least fifty thousand dollars ($50,000) for any one person in any one occurrence, and a limit of at least five hundred thousand dollars ($500,000) for each occurrence.

(c) Liability for loss of or damage to property: A limit of at least five hundred thousand dollars ($500,000) for each occurrence.

§208.12 *Terms and conditions of insurance coverage.*

With respect to insurance required by this part:

(a) Insurance contracts shall provide for payment by the insurer on behalf of the insured supplemental air carrier, within the specified limits of liability, of all sums which the insured carrier shall become legally obligated

to pay as damages for bodily injury to or death of any person, or for loss of or damage to property of others, resulting from the negligent operation, maintenance or use of aircraft in air transportation by the insured carrier.

(b) The liability of the insurer shall apply to all operations by the insured carrier in air transportation. The liability of the insurer shall not be subject to any exclusion by virtue of violations, by the insured carrier, of any applicable safety or economic provision of the Federal Aviation Act of 1958, as amended, or Public Law 87-528; or of any applicable safety or economic rule, regulation, order, or other legally imposed requirement prescribed thereunder by the Federal Aviation Agency or the Civil Aeronautics Board, respectively.

(c) The liability of the insurer shall not be contingent upon the financial condition, solvency, or freedom from bankruptcy of the insured. The limits of the insurer's liability for the amounts prescribed herein shall apply separately to each occurrence, and any payment made under the policy because of any one occurrence shall not reduce the liability of the insurer for payment of other damages resulting from any other occurrence.

(d) Within the limits of liability herein prescribed, the insurer shall not be relieved from liability by any condition in the policy or any endorsement thereon, or violation thereof by the insured air carrier, other than the exclusions set forth in §208.13, or such other exclusions as may be individually approved by the Board. Cancellation of an approved policy shall be effected only upon written notice to the Board, in accordance with §208.14(d).

(11847, 11848)

(e) Except for the geographical exclusions authorized

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in §208.13(g) and (h), the coverage shall be worldwide. For good cause shown, however, the Board may waive this requirement or amend the certificate or other operating authority to describe the geographical areas actually served by the supplemental air carrier. Authority for any general restriction (e.g., North American continent, Western Hemisphere, etc.) shall be recited in any endorsement containing a general restriction.

§208.13 *Authorized exclusions of liability.*

Unless other exclusions are individually approved by the Board, no policy or certificate of insurance required by this part shall contain any exclusion other than the following authorized exclusions:

"The insurance afforded under this policy shall not apply to:

(a) Any loss against which the Named Insured has other valid and collectible insurance, except that the limits of liability provided under this policy shall be excess of the limits provided by such other valid and collectible insurance up to the limits certified in a Certificate of Insurance issued to the Civil Aeronautics Board in Washington, D. C., but in no event exceeding the limits of liability expressed elsewhere in this policy;

(b) Any loss arising from the ownership, maintenance or use of any aircraft not declared to the Insurer in accordance with the terms and conditions of this policy;

(c) Liability assumed by the Named Insured under any contract or agreement, unless such liability would have attached to the Insured even in the absence of such contract or agreement;

(d) Bodily injury, sickness, disease, mental anguish or death of any employee of the Named Insured while engaged in the duties of his employment, or any obligation for which the Named Insured or any company as his Insurer may be held liable under any workmen's compensation or occupational disease law;

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(e) Loss of or damage to property owned, rented, occupied, or used by, or in the care, custody or control of the Named Insured, or carried in or on any aircraft with respect to which the insurance afforded by this policy applies;

(f) Personal injuries or death, or damage to or destruction of property, caused directly or indirectly, by hostile or warlike action, including action in hindering, combating or defending against an actual impending or expected attack by any government or sovereign power, *de jure* or *de facto*, or military, naval, or air forces, or by an agent of such government, power, authority or forces; the discharge, explosion, or use of any weapon of war employing atomic fission or atomic fusion, or radio-active materials; insurrection, rebellion, revolution, civil war or usurped power, including any action in hindering, combating, or defending against such an occurrence; or confiscation by any government or public authority.

(11849, 11850)

(g) Any loss arising from operations by the Named Insured within any country of the Sino-Soviet bloc or Cuba: *Provided,* That a loss caused by mere misadventure in flying over or landing in such territory shall not be excluded. The "Sino-Soviet bloc" is defined to include Lithuania, Latvia, Estonia, Czechoslovakia, Bulgaria, Rumania, Hungary, Poland, Albania, East Germany (Soviet zone of Germany and Soviet sector of Berlin), Communist China, North Korea, North Vietnam, Outer Mongolia, and the Union of Soviet Socialist Republics;

(h) Any loss arising from operations by the Named Insured to or from installations of the Distant Early Warning System (DEWline) or the Ballistic Missile Early Warning System (BMEWS)."

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§208.14 *Filing of certificates, endorsements and notices.*

(a) Certificates of insurance, endorsements, and notices of cancellation shall be filed in duplicate on forms prescribed and furnished by the Board. All documents shall be signed in ink by an authorized officer or agent of the insurer; no facsimile signatures will be accepted.

Note: CAB Forms 606, 607, 608, and 609 are available, upon request, from the Publications Section, Civil Aeronautics Board, Washington, D. C. 20428.

(b) Endorsements that add previously unlisted aircraft to coverage or that delete listed aircraft from coverage shall be filed with the Board not more than five (5) days after the effective date of such endorsement: *Provided, however,* That aircraft shall not be listed in the carrier's

operations specifications with the Federal Aviation Agency and shall not be operated unless liability insurance coverage has attached.

(c) A supplemental carrier which intends to operate a charter flight to or from a country of the Sino-Soviet bloc or Cuba or to or from a DEWline or BMEWS installation and whose approved insurance coverage excludes operations within such areas shall file an endorsement waiving the applicable exclusion, or a separate certificate of insurance expressly applicable to such flight, at least 30 days before the proposed flight date, unless the Board finds that waiver of this requirement is in the public interest.

(d) Certificates of insurance approved by the Board shall not be canceled by the insurer upon less than thirty (30) days' notice to the Board and the insured carrier by registered mail. An insured carrier shall not cancel an approved certificate during the effectiveness of any operating authorization from the Board unless the notice of cancellation is accompanied by a replacement certificate

of insurance, complying in all respects with this part and effective upon the date of cancellation of the approved certificate and policy, or by a notice that the carrier has ceased operations.

(e) If any certificate of insurance, endorsement, notice of cancellation or other document relating to liability insurance required to be filed with the Board does not comply with these regulations, the Board will notify the air carrier and the insurer by registered mail, or by telegram, stating

the deficiencies. If the carrier is not notified of objections by the Board within 20 days after filing of any document, such document shall be deemed approved by the Board as complying with the requirements of this part, but such approval may be rescinded by the Board upon reasonable notice.

(f) All documents required to be filed with respect to liability insurance shall be filed with the Civil Aeronautics Board, Attention of Bureau of Accounts and Statistics, B-42b, Washington, D.C. 20428.

§208.15 *Compliance.*

In addition to all other applicable sanctions provided by law or the regulations of the Board, operation in air transportation of any aircraft, or performance of services within any geographical area, to which Board-approved liability insurance does not apply shall be cause for immediate suspension of all operating authority, pursuant to section 401(n)(5) of the Act and Subpart J of Part 302 of this chapter.

Minimum Extent of Service

§208.25 *Minimum service requirements.*

Each supplemental air carrier shall perform services

authorized by its certificate or authority to engage in supplemental air transportation for at least 500 hours of revenue flight in any two consecutive calendar quarters. Failure to perform such minimum services will be deemed

to constitute a *prima facie* case for suspension of the carrier's operating authority pursuant to the provisions of section 401(n)(5) of the Act: *Provided,* That the carrier may, within 15 days after the end of the two consecutive calendar quarters in which such failure occurred, show unusual circumstances constituting good cause why its operating authority should not be suspended.

Operations and Tariffs

§208.30 *Prohibited advertising.*

(a) No supplemental air carrier shall advertise its services or hold itself out to the public as an air carrier authorized to engage in air transportation unless it includes the words "supplemental air carrier" in such advertising.

(b) No supplemental air carrier shall conduct business in any name other than that set forth in its certificate, except as expressly authorized by the Board.

§208.31 *Prohibited control of a supplemental air carrier.*

Control of a supplemental air carrier shall not, without prior application to and approval by the Board, be transferred, directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled, or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person con-

trolled or participated in the control of said air carrier. Any such application may be approved by the Board with or without hearing. No such application shall be denied unless the Board finds, after notice to said supplemental air carrier and the parties to the proposed transfer, and after opportunity for hearing, that, in the event the proposed transfer is consummated, said supplemental air carrier will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this section, a transfer of 20 percent or more of the voting stock of the supplemental air carrier shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

§208.31a *Written agreements with ticket agents.*

Each agreement between a supplemental air carrier and any ticket or cargo agent shall be reduced to writing and signed by all the parties thereto, if it relates to any of the following subjects:

(a) The furnishing of persons or property for transportation;

(b) The arranging for flights for the accommodation of persons or property;

(c) The solicitation or generation of passenger or cargo traffic to be transported;

(d) The charter or lease of aircraft.

§208.32 *Tariffs and terms of service.*

(a). No air carrier shall perform any supplemental air transportation unless such air carrier shall have on file

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with the Board, pursuant to Part 221 of this subchapter, a currently effective tariff showing all rates, fares, and charges for the use of the entire capacity or less than the entire capacity (as defined in §208.3(s)) of one or more aircraft in such supplemental air transportation and showing all rules, regulations, practices and services in connection with such supplemental air transportation, including eligibility requirements for charter groups not inconsistent with those established in this part.

(b) The total charter price and other terms of service rendered pursuant to this part shall conform to those set forth in the applicable tariff on file with the Board and in force at the time of the respective charter flight and the contract must be for the entire capacity or for less than the entire capacity (as defined in §208.3(s)) of one or more aircraft. Where a carrier's charter charge computed according to a mileage tariff includes a charge for ferry mileage, the carrier shall refund to the charterer any sum charged for ferry mileage which is not in fact flown in the performance of the charter: *Provided,* That the carrier shall not charge the charterer for ferry mileage flown in addition to that stated in the contract unless such mileage is flown for the convenience of and at the express direction of the charterer.

(11854, 11855)

(c) Reserved.

(d) Each and every contract for a charter to be operated hereunder shall incorporate the provisions of §§208.10 through 208.15, inclusive, and §§208.33 and 208.33a, where applicable, concerning insurance and substitute transportation.

11855

(e) The carrier shall require full payment of the total charter price or the posting of a satisfactory bond for full payment prior to the commencement of the air transportation.

(f) In the case of a round-trip passenger charter, one-way passengers shall not be carried except that up to five percent of the charter group may be transported one way in each direction. This provision shall not be construed as permitting knowing participation in any plan whereby each leg of a round trip is chartered separately in order to avoid the five percent limitation aforesaid. In the case of a charter contract calling for two or more round trips, there shall be no intermingling of passengers and each planeload or each plane-load group shall move as a unit in both directions.

§208.33 *Flight delays and substitute air transportation.*

Supplemental air carriers shall assume, and publish as part of the rules and regulations of their tariffs applicable to passenger service in interstate and overseas air transportation, the following obligations without prejudice, and in addition, to any other rights or remedies of passengers under applicable law:

(a) In case of flight delays of more than six hours beyond the departure time stated in the charter contract or four hours beyond the time of departure stated on an individual flight ticket, the carrier, upon request and at the passenger's or charterer's option, (or in case of the engagement by one charterer of less than the capacity of an aircraft, at the option of any one charterer) must provide alternative air transportation at no additional cost to the passenger or charterer, or immediately refund the full value of the unused ticket or the unperformed charter contract.

11856

(b) In case of additional flight delays enroute exceeding six hours for charter flights or two hours for individually ticketed flights, the carrier must, upon request and at the passenger's or charterer's option, (or in case of the engagement by one charterer of less than the capacity of an aircraft, at the option of any one charterer) furnish alternative transportation to the specified destination, or immediately refund the full value of unperformed transportation. The enroute delays shall be calculated without inclusion of any delay at departure but all additional delays at intermediate stops en route shall be added up in determining whether the limit of delay has been reached.

(c) In case of flight cancellations or flight delays, refunds shall be paid immediately upon presentation of an unused flight coupon or upon demand of the charterer or his representative (or in case of the engagement by one charterer of less than the capacity of an aircraft, upon demand of any one charterer or his representative) to the air carrier or its agent.

(11856, 11857)

(d) The rules and regulations in the carrier's tariffs governing immediate refunds or alternative transportation may provide for an exception in case of unavoidable delays due solely to weather.

§208.33a *Substitution or subcontracting.*

Supplemental air carriers may subcontract the performance of services which they have contracted to perform only to air carriers authorized by the Board to perform such services.

§208.34 *Records and record retention.*

(a) Prior to performing any supplemental air transportation pursuant to this part, the carrier shall execute, and require the travel agent (if any) and charterer to execute, the form "Statement of Supporting Information".

11857

(b) Each air carrier operating pursuant to this part shall comply with the applicable record-retention provisions of Part 249 of this subchapter, as amended.

§208.35 *Payments, gratuities, and donations.*

(a) Neither a carrier nor a travel agent shall make any payments or extend gratuities of any kind, directly or indirectly, to any member of a chartering organization in relation either to air transportation or land tours or otherwise.

(b) Neither a carrier nor a travel agent shall make any donation to a chartering organization or an individual charter participant.

(c) Nothing in this section shall preclude a carrier from paying a commission (within the limits of §208.202) to a member of a chartering organization if such member is its agent, or restrict a carrier or a travel agent from offering to each member of the charter group such advertising and good will items as are customarily extended to individually ticketed passengers (e.g., canvas traveling bag or a money exchange computer).

11858

SUBPART B—PROVISIONS RELATING TO MILITARY CHARTERS

§208.100 *Applicability of subpart.*

This subpart sets forth the special rules applicable to military charters.

§208.101 *Minimum rates and compensation for air transportation performed for the military establishment.*

The authority conferred upon a supplemental air carrier pursuant to section 7 of Public Law 87-528, and/or a certificate of public convenience and necessity issued under sec. 401(d)(3) of the Act, insofar as it encompasses the right to provide air transportation pursuant to contract with the military establishment of the United States or any branch thereof in foreign and overseas air transportation, and air transportation between the 48 contiguous states on the one hand and the states of Alaska and Hawaii on the other hand, shall be subject to the condition that the rate or compensation received by the carrier for any such air transportation is not less than that set forth in

(11858, 11859)

§288.7 of this subchapter, irrespective of whether such contract falls within the definition of short notice MATS charter service contained in §288.1 of this subchapter.

§208.102 *Substitute service.*

Supplemental air carriers are authorized to provide "substitute service" as defined in this part, subject to the provisions of Part 288 of this subchapter.

11859

SUBPART C—PROVISIONS RELATING TO PRO RATA CHARTERS

§208.200 *Applicability of subpart.*

This subpart sets forth the special rules applicable to pro rata charters, other than those subject to Part 295 of this subchapter.

Requirements Relating to Air Carriers

§208.200a *Solicitation and formation of a chartering group.*

(a) A carrier shall not engage, directly or indirectly, in any solicitation of individuals (through personal contact, advertising, or otherwise) as distinguished from the solicitation of an organization for a charter trip.

(b) A carrier shall not employ, directly or indirectly, any person for the purpose of organizing and assembling members of any organization, club, or other entity into a group to make the charter flight.

§208.201 *Pre-trip notification.*

Upon a charter flight date being reserved by the carrier or its agent, the carrier shall provide the prospective charterer with a copy of this Part 208.[4] The charter contract shall include a provision that the charterer, and any agent thereof, shall only act with regard to the charter in a manner consistent with this part and that the charterer shall within due time submit to the carrier such information as specified in §§208.214 and 208.215 and submit to each charter participant the information identified in §208.214.

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The carrier shall also require that the charterer and any travel agent involved shall furnish it in due time for review before flight the information required in §§208.216 and 208.204, respectively.

§208.202 *Agent's commission.*

The carrier shall not pay its agent a commission or any other benefits, directly or indirectly, in excess of five percent of the total charter price as set forth in the carrier's charter tariff on file with the Board, or more than the commission related to charter flights paid to an agent by a carrier certificated to render regular service on the same route, whichever is greater. The carrier shall not pay any commission whatsoever to an agent if the agent receives a commission from the charterer for the same service.

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[4] Copies of this part are available by purchase from the Superintendent of Documents, Washington, D. C. 20402. Single copies will be furnished without charge on written request to the Publications Section, Civil Aeronautics Board, Washington, D. C. 20428.

(11860, 11861)

Requirements Relating to Travel Agents

§208.203 *Prohibition against double compensation.*

A travel agent may not receive a commission from both the direct air carrier and the charterer for the same service.

§208.204 *Statement of supporting information.*

Travel agents shall execute, and furnish to air carriers, Section A of Part II of the Statement of Supporting Information attached hereto and made a part hereof, at such time prior to flight as required by the carrier to afford it due time for review thereof.

Requirements Relating to the Chartering Organization

§208.210 *Solicitation of charter participants.*

As the following terms are defined in §208.3, members of the charter group may be solicited only from among the

bona fide members of an organization, club, or other entity, and their immediate families, and may not be brought together by means of a solicitation of the general public. Solicitation of, as well as participation by, members of an organization with respect to charter flights shall extend only to the organization, or the particular chapter or unit thereof, which signs the charter agreement with the air carrier as the charterer.

§208.211 *Passengers on charter flights.*

Only bona fide members of the charterer, and their immediate families (except as provided in §208.212), may

participate as passengers on a charter flight. The charterer must maintain a central membership list, available for inspection by the carrier or Board representative, which shows the date each person became a member.[5] Solicitation of, as well as participation by, members of an organization with respect to charter flights shall extend only to the organization, or the particular chapter or unit thereof, which signs the charter agreement with the air carrier as the charterer. Where the charterer is engaging in round-trip transportation, one-way passengers shall not participate in the charter flight except as provided in §208.32(f). When more than one round trip is contracted for, intermingling between flights or reforming of plane-load or less than plane-load charter groups shall not be permitted and each such group must move as a unit in both directions.

§208.212 *Participation of immediate families in charter flights.*

The immediate family of any bona fide member of a charter organization may participate in a charter flight: *Provided, however,* That this section shall not apply to study group charters.

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§208.213 *Charter costs.*

(a) The costs of charter flights shall be prorated equally among all charter passengers and no charter passenger shall be allowed free transportation; except that (1) chil-

[5] Where the charter is based on employment in one entity or student status at a college, records of the corporation, agency or college will suffice to meet the requirement.

dren under twelve years of age may be transported at a charge less than the equally prorated charge; (2) children under two years of age may be transported free of charge.

(b) The charterer shall not make charges to the charter participants which exceed the actual costs incurred in consummating the charter arrangements, nor include as a part of the assessment for the charter flight any charge for purposes of charitable donations. All charges related to the charter flight arrangements collected from the charter participants which exceed the actual costs thereof shall be refunded to the participants in the same ratio as the charges were collected.

(c) Reasonable administrative costs of organizing the charter may be divided among the charter participants. Such costs may include a reasonable charge for compensation to members of the charter organization for actual labor and personal expenses incurred by them. Such charge shall not exceed $300 (or $500 where the charter participants number more than 80) per round-trip flight. Neither the organizers of the charter, nor any member of the chartering organization, may receive any gratuities or compensation, direct or indirect, from the carrier, the travel agent, or any organization which provides any service to the chartering organization whether of an air transportation nature or otherwise. Nothing in this section shall preclude a member of a chartering organization who is the carrier's agent from receiving a commission from the car-

rier (within the limits of §208.202), or prevent any member of the charter group from accepting such advertising and

good will items as are customarily extended to individually ticketed passengers (e.g., a canvas traveling bag or a money exchange computer).

(d) If the total expenditures, including among other items compensation to members of the chartering organization, referred to in paragraph (c) of this section, but exclusive of expenses for air transportation or land tours, exceed $750 per round-trip flight, such expenditures shall be supported by properly authenticated vouchers to be given to the carrier with the "Non-transatlantic Charter—Post Flight Report" required pursuant to §208.214.

§208.214 *Statements of charges.*

(a) Any announcements or statements by the charterer to prospective charter participants of the anticipated individual charge for the charter shall clearly identify the portion of the charges to be paid separately for the air transportation, for the land tour, and for the administrative expenses of the charterer.

(b) Within 15 days after completion of each one-way or round-trip flight, the charterer shall complete and supply to each charter participant and the air carrier involved a detailed report showing the charge per passenger transported and the charterer's total receipts and expenditures. The report shall be submitted in the form of, and contain such information including the above as more fully specified by the "Non-transatlantic Charter—Post Flight Report," annexed hereto and made a part hereof.

§208.215 *Passenger manifests.*

(a) Prior to each one-way or round-trip flight a manifest shall be filed by the charterer with the air carrier showing the names and addresses of the persons to be transported and specifying the relationship of each such person to the charterer (by designating opposite his name one of the three relationship categories hereinafter described). The manifest may include "stand-by" participants (by name, address and relationship to charterer).

(b) The relationship of a prospective passenger shall be classified under one of the following categories and specified on the passenger manifest as follows:

(1) A bona fide member of the chartering organization at the time the organization first gave notice to its members of firm charter plans. Specify on the passenger manifest as "(1) member."

(2) The spouse, dependent child or parent of a bona fide member who lives in such member's household. Specify on the passenger manifest as "(2) spouse" or "(2) dependent child" or "(2) parent." Also give name and address of member relative where such member is not a prospective passenger.

(3) Bona fide members of entities consisting only of persons from a study group, or a college campus, or employed by a single Government agency, industrial plant, or mercantile company, or persons whose proposed participation in the charter flight was permitted by the Board

pursuant to request for waiver. Specify on the passenger manifest as "(3) special" or "(3) member" (where participants are from a study or campus group or from a Government agency, industrial plant or mercantile company).

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(c) In the case of a round-trip flight, the above information must be shown for each leg of the flight and any variations between the outbound and inbound trips must be explained on the manifest.

(d) Attached to such manifest must be a certification, signed by a duly authorized representative of the charterer, reading:

> The attached list of persons includes every individual who may participate in the charter flight. Every person as identified on the attached list (1) was a bona fide member of the chartering organization at the time the chartering organization first gave notice to its members of firm charter plans, or (2) is a bona fide member of an entity consisting of (a) students and educational staff of a single school, or (b) employees of a single Government agency, industrial plant, or mercantile establishment, or (3) is a person whose participation has been specifically permitted by the Civil Aeronautics Board, or (4) is the spouse, dependent child, or parent of a person described hereinbefore and lives in such person's household, or (5) is a bona fide participant in a study group charter.
>
> .....
>
> (Signature)

(11865, 11866)

§208.216 *Statement of supporting information.*

Charterers shall execute and furnish to air carriers Section B of Part II of the Statement of Supporting Information attached hereto and made a part hereof at such time prior to flight as required by the carrier to afford it due time for review thereof.

SUBPART D—PROVISIONS RELATING TO SINGLE ENTITY CHARTERS

§208.300 *Applicability of subpart.*

This subpart sets forth the special rules applicable to single entity charters, other than those subject to Part 295 of this subchapter.

§208.301 *Tariffs to be on file.*

The provisions of §208.32(a) shall apply to charters under this subpart.

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§208.302 *Terms of service.*

(a) The total charter price and other terms of service shall conform to those set forth in the applicable tariff filed in accordance herewith and the contract shall be for the entire capacity or less than the entire capacity of one or more aircraft as defined in §208.3(s).

(b) The terms of service prescribed in §§208.10 through 208.15, inclusive, §§208.32(d), 208.33 and 208.33a shall be applicable in the case of single entity charters.

§208.303 *Commissions paid to travel agents.*

No direct air carrier shall pay a travel agent any commission in excess of five percent of the total charter price or more than the commission related to charter flights paid to an agent by a carrier certificated to fly the same route, whichever is greater.

SUBPART E—PROVISIONS RELATING TO MIXED CHARTERS

§208.400 *Applicable rules.*

The rules set forth in Subpart C of this part shall apply in the case of mixed charters, other than those subject to Part 295 of this subchapter.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

Note: The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

(11867)

11867

(See opposite) ☞

NON-TRANSATLANTIC CHARTERS

STATEMENT OF SUPPORTING INFORMATION*

Part I - To be completed by air carrier for each single entity, mixed, or pro rata charter. (Where more than one round-trip flight is to be performed under the charter contract, clearly indicate applicability of answers.)

1. Name of transporting carrier: _____

2. Commencement date(s) of proposed flight(s):
   (a) Going _____
   (b) Returning _____

3. Points to be included in proposed flight(s):
   (a) From _____ to _____
   (b) Returning from _____ to _____
   (c) Other stops required by charterer: _____

4. (a) Type of aircraft to be used: _____
   (b) Seating capacity: _____

5. (a) Total charter price: _____
   (b) Does the charter price conform to tariff on file with the Board? _____
   (c) If pro rata or mixed charter, explain construction of charter price in relation to tariff on file with the Board. (In case of mileage tariff, show mileage for each segment involved and indicate whether segment is live or ferry.) _____

6. (a) Has the carrier paid, or does it contemplate the payment of any commissions, direct or indirect, in connection with the proposed flight?
   Yes ☐ No ☐
   (b) If "yes," give names and addresses of such recipients and indicate the amount paid or payable to each recipient. If any commission to a travel agent exceeds 5 percent of the total charter price, attach a statement justifying the higher amount under this regulation. _____

7. Name and address of charterer: _____

8. If charter is single entity, indicate purpose of flight: _____

9. On what date was the charter contract executed? _____

10. If the charter is pro rata, has a copy of Part 208 of the Civil Aeronautics Board's Economic Regulations been mailed to or delivered to the prospective charterer? Yes ☐ No ☐

* This must be retained by the air carrier for two years pursuant to the requirements of Part 249, but open to Board inspection, and to be filed with the Board on demand.

Part II - To be completed for pro rata or mixed charters only.

Section A - To be supplied by travel agent, or, where none, by the air carrier or an affiliate under its control where either of the latter performs or provides any travel agency function or service (excluding air transportation sales but including tour arrangements).

1. Has the agent or, to his knowledge, have any of his principals, officers, directors, associates or employees compensated any member of the chartering organization in relation either to the proposed charter flight or any land tour? Yes ☐ No ☐

2. Does the agent have any financial interest in any organization rendering services to the chartering organization? Yes ☐ No ☐
If answer is "yes," explain:

_____

_____

VERIFICATION 1/

State of_____)
County of_____) ss:

_____, being duly sworn, deposes and says that to
Name
the best of his knowledge and belief all the information presented in Part II, Section A of this Statement is true and correct.

_____
(Signature and address of travel agent or, if none, of authorized official of air carrier where such carrier or an affiliate under its control performs any travel agency function or service (excluding air transportation sales but including land tour arrangements).

Sworn to before me this day, the_____of_____, 19___.

_____
(Signature of person administering oath. Also, set forth here below the name, address, and authority of such person.)

/Seal/

_____

1/ Whoever, having taken an oath before a competent--person--that he will testi declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall, except as otherwise expressly provided by law, be fined not more than $2,000 or imprisoned not more than five years, or both. Title 18, U.S.C., §1621.

WARRANTY

I, _____, represent and warrant that I have
(Name)
acted with regard to this charter operation (except to the extent fully and specifically explained in Part II, Section A) and will act with regard to such operation in a manner consistent with Part 208 of the Board's Ecomomic Regulations.

_____

Signature and address of travel agent or, if none, of authorized official of air carrier where such carrier or an affiliate under its control performs any travel agency function or service (excluding air transportation sales but including land tour arrangements).

Section B - To be executed by charterer

1. All passengers were bona fide members of the chartering organization on the date when firm charter plans were first announced or are in the immediate families (spouse, dependent children, or parents living in a members household) of such members. Yes /_/ No /_/

2. Date when first charter plans were first announced: _____

3. There is a central membership list showing the date each person became a member. Yes /_/ No /_/

4. The central membership list is available for inspection at the following location _____.

5. Administrative expenses being assessed against charter passengers will not exceed $_____.

6. If the charter is round trip, the number of one-way passengers will not exceed:

_____ on first leg.
_____ on return leg.

7. No member of the chartering organization has received or will receive any compensation or benefit, directly of indirectly, from the air carrier, the travel agent, or any organization providing services in relation to the air or land portion of the trip.

VERIFICATION OF CHARTERER 1/

State of _____)
County of _____) ss:

_____ and _____
(Name) (Name)

being duly sworn, hereby separately dispose and say that to the best of the knowledge and belief of each of them all the information in Part II, Section B, of this Statement is true and correct.

_____
(Signature of person within organization in charge of charter arrangements.)

Sworn to before me this day, the _____ of _____, 19___.

_____
(Signature of person administering oath. Also, set forth here below the name, address and authority of such person.)
[Seal]

_____
(Signature and title of officer. This should be the chief officer of the chartering organization except in the case of a school charter, in which case the verification must be by a school official not directly involved in charter.)

Sworn to before me this day, the _____ of _____, 19___.

_____
(Signature of person administering oath. Also, set forth here below the name, address and authority of such person.)
[Seal]

1/ See footnote 1 on page 38

WARRANTY OF CHARTERER

I, _____ and _____
(Name) (Name)

represent and warrant that the charterer has acted with regard to this charter operation (except to the extent fully and specifically explained in Part II, Section B), and will act with regard to such operation, in a manner consistent with Part 208 of the Board's Economic Regulations.

_____
(Signature of person within organization in charge of charter arrangements.)

_____
(Signature and title of officer. This should be the chief officer of the chartering organization except in the case of a school charter, in which case the warranty must be by a school official not directly involved in charter.)

VERIFICATION OF EMPLOYER 1/

(To be furnished where eligibility to participate in charter is dependent upon employment by a particular entity.)

State of _____) ss:
County of _____)

_____, being duly sworn, deposes and says that to
(Name)
the best of his knowledge and belief solicitation for this charter has been confined to persons employed by _____
(Name of employer entity).
or persons in the immediate families of such employees.

_____
(Signature and title of authorized official of employer.)

Sworn to before me this day, the _____ of _____ 19___.

_____

1/ See footnote 1 on page 38.

(Signature of person administering oath. Also, set forth here below the name, address, and authority of such person.)
[Seal]

WARRANTY OF AIR CARRIER

To the best of my knowledge and belief, all the information presented in this statement including, but not limited to, those parts verified by the charterer and the travel agent, is true and correct. I represent and warrant that the carrier has acted with regard to this charter operation (except to the extent fully and specifically explained in this statement or any attachment thereto) and will act with regard to such operation in a manner consistent with Part 208 of the Board's Economic Regulations. 1/

(Signature and title of authorized official of air carrier.)

1/ Any air carrier, or any officer, agent, employee, or representative thereof, who shall, knowingly and willfully, fail or refuse to keep or preserve accounts, records and memoranda in the form and manner prescribed by the Board, or shall, knowingly and willfully, falsify, mutilate, or alter any such report, account, record or memorandum, shall be guilty of a misdemeanor and, upon conviction thereof, be subject for each offense to a fine of not less than $100 and not more than $5,000. Title 49, U.S.C. §1472.

NON-TRANSATLANTIC CHARTERS

POST FLIGHT REPORT

INSTRUCTIONS

The charterer shall complete and file a report in this form with the air carrier within 15 days of each one-way or round-trip charter flight. A report in this form shall also be furnished each charter participant by the charterer within 15 days after completion of each one-way or round-trip charter flight.

1. Name of carrier: _____
2. Name of chartering organization: _____
3. Analysis of charterer's receipts:

(a) _____
(No. of one-way psgrs.)

X _____
(Charge per psgr. 1/ (including amounts later refunded))

= _____

(b) _____
(No. of round-trip psgrs.)

X _____
(Charge per psgr. 1/ (including amounts later refunded))

= _____

(c) Receipts from other sources (explain)
= _____

(d) Total receipts [(a)+(b)+(c)] = _____

4. Analysis of charterer's expenditures:

Item of expenditure 2/	Paid to 3/	Amount

Total 4/ _____

1/ If charter cost was not divided equally among all participants actually transported, indicate clearly the individual amounts collected and the number of passengers paying each such amount.
2/ As a separate item there should be listed here a total of all the amounts refunded to the charter participants; also list separately air transportation, land tour, and administrative expenses.
3/ Disclose any relationship to chartering organization.
4/ If this item does not agree with item 3(d), submit an explanatory statement as to the reasons therefor.

VERIFICATION 5/

State of_____) ss:
County of_____)

I,_____, being duly sworn, hereby depose and say that this report has been prepared by me or under my direction, that I have carefully examined it and that to the best of my knowledge and belief it is a complete and accurate statement, and a copy hereof has been distributed to each charter participant.

_____
(Signature of person in charge of charter arrangements.)

Sworn to before me this day, the_____of_____, 19___.

_____
(Signature of person administering oath. Also, set forth here below the name, address, and authority of such person.)
[Seal]

5/ Whoever, having taken an oath before a competent--person--that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall, except as otherwise expressly provided by law, be fined not more than $2,000 or imprisoned not more than five years, or both. Title 18, U.S.C., §1621.

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BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

PETITION FOR RECONSIDERATION

of

American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc.

Communications with respect to this Petition should be sent to:

POGUE & NEAL
1001 Connecticut Avenue, N. W.
Washington, D. C. 20036

April 4, 1966

(11983)

11983

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

PETITION FOR RECONSIDERATION

of

American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc.

Now comes the above-named certificated carriers ("Joint Intervenors") to petition for a reconsideration of the decision in the above-captioned proceeding in the respects set forth below.

Lawfulness of inclusive tour charters

1. As the majority recognized at page 3 of their opinion, the "major issue" in this proceeding is that of whether the Board has the statutory authority to permit supplementals to charter aircraft to travel agents which, in turn, may sell individually ticketed travel to the general public as part

of an all expense tour. Two members of the Board, constituting a majority of the members of the Board partici-

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pating in this case, held that the Board had the statutory authority to permit such inclusive tour charters. The Joint Intervenors seek a reconsideration of that holding.

2. Judge Gillilland filed a 16 page dissent demonstrating that inclusive tour charters do not constitute "charter trips in air transportation" and, therefore, supplemental air transportation within the meaning of section 101(33) of the Federal Aviation Act of 1958, as amended. His conclusion was based upon the following compelling considerations:

a. There is simply no rational consistency between the finding of the majority, on the one hand, that it would be unlawful for supplementals to sell individually ticketed travel to the general public as part of an all expense tour, and its finding that all is made right if a supplemental charters its aircraft to a tour operator who, in turn, offers the otherwise unlawful individually ticketed travel to the general public as part of an all expense tour. (pp. 1-2)

b. *American Airlines, Inc.* v. *CAB*, 348 F. 2d 349 (1965), far from supporting the position of the two-man majority, flatly invalidates an all expense tour charter program. That case held that two charterable groups might ride the same aircraft *if* no direct solicitation of the general public for individually ticketed travel is involved. The all expense tour charter program authorized by the majority herein *does* involve direct

solicitation of the general public for individually ticketed travel. It is, therefore, unlawful under the *American* case. (pp. 2-3)

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c. Reliance by the majority upon ICC precedent as indicative of the scope of "charters" which the Board may authorize under the Federal Aviation Act is totally in error. It borders on capriciousness to rely upon a very fuzzy and unsettled practice of surface all expense tour charters (pp. 4-6), in the face of the flat rejection by the Board of clear-cut ICC precedent prohibiting split charters in the *Transatlantic Charter Investigation.* (pp. 3-4)

d. The majority has misread the legislative history of P. L. 87-528. It concludes that Congressional *rejection* of a provision specifically permitting all-expense tour charters somehow demonstrates Congressional intent to *permit* such charters. Such a conclusion is unreasonable on its face, and is completely unreconcilable with the emphatic, unequivocal, and unanimous statements by managers of the bill (including the principal figures on the pertinent committees on both sides of the Congress) *rejecting* all expense tour charters. (pp. 6-10)

e. The inclusive tour charter program merely duplicates, at cut-rate fares, services now available on the certificated carriers. (pp. 10-15) Such a program is inconsistent with Congressional intent to permit charter operations designed to supplement, not duplicate, scheduled air transportation. (pp. 10-15)

f. Assuming, *arguendo,* the lawfulness of all expense tour charters by tour operators, the Board must first institute a proceeding in order to determine such elemental factors as the identity of the tour operators to conduct such a service, the plan of operations, and

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the existence of an overall public interest for a service. The Board may not circumvent such a proceeding or supply missing evidence simply by labeling its course of action "experimental or developmental." (pp. 15-16)

3. Seldom has there ever been such a cogently reasoned decision of law contained in a dissent to a decision of the Board as that set forth by Judge Gillilland. Reconsideration, in the light of the dissent alone, requires a reversal by the majority of its decision to permit all expense tour charters.

4. There is an additional reason for reconsideration of this matter. The issue of the lawfulness of all expense tour charters, and of the inextricably interrelated regulations by which such charters are to be governed, was *not* the product of a majority of the Board. It was the decision of only *two* of five members of the Board. The Court of Appeals for the Ninth Circuit, in an opinion handed down after the decision in this case, held that "absent statutory authority or instruction to the contrary, three members of a five member commission must concur in order to enter a binding order on behalf of the commission." *Flothill Products, Inc., et al.* v. *Federal Trade Commission,* No. 19521 (Opin. p. 4,

March 16, 1966). The court drew a strong distinction between authority permitting action by less than the full Board, and authority permitting less than a majority of the full commission to enter a final order. The latter authority, the Court said, required a specific statutory mandate because "it is difficult to believe that Congress conceived of the five member FTC with its politically balanced make-up, permitting two of its members to speak for the Commission." (Idem, p. 6) Section 201(c) of the Federal Aviation Act Congress permits the Board to act through three of

its members as a quorum (49 U. S. C. 1321(c)), but, as in the case of the Federal Trade Commission Act, there is *no* provision in the Federal Aviation Act permitting two members to enter a final order of the Board. As the Court pointed out, "if Congress wanted to authorize the exercise of the powers of an administrative body by less than the full body in other situations, it did not lack the words to do so expressly". (Idem p. 6) In this connection the Court cited the authority granted to the National Labor Relations Board " . . . to delegate to any group of three or more members any or all of the powers which it may itself exercise." 29 U. S. C. 153(b).

Regulation of all inclusive tour charters

5. The Joint Intervenors submit that regulations simply cannot be written which will somehow render lawful charters by supplementals to tour operators who will then sell individually ticketed space to the general public as part of an all inclusive tour. No matter how such charters are

disguised, they are still totally incompatible with the definition of supplemental air transportation in the Federal Aviation Act. Further, any regulations pursuant to which such charters would be conducted are invalid if they lack the affirmative support of three members of the Board.

6. However, assuming, *arguendo,* judicial clearance of the two-member majority's adoption of the all expense tour program, there are a minimum of four changes in the regulatory pattern proposed by the Board which are required by the public interest.

7. (i) *Enforcement of three stop provision.* The majority revised the Examiner's recommendations by increasing the number of required tour stops from two to three. It noted that the "three-stop requirement will, in our judgment, increase the emphasis on the tour aspect of the package and will provide further assurance against the

tours being used as subterfuge for individually ticketed service between the originating city and the major city of destination." (p. 19)

8. Whereas a three-stop restriction is obviously better than a two-stop restriction, it is insufficient, in and of itself, to achieve the "assurance" which the majority seeks. There must be positive and unequivocal restrictions placed in the regulation to assure implementation of the three-stop restriction. Otherwise a traveler could find it more economic simply to purchase a three-stop "tour", thus complying with the Board's three-stop requirement, and yet evade the whole tour concept by voluntarily dropping his coupons

at the second two stops.[1] The net result would be a solicitation of pleasure traffic from the general public going to a single resort for a vacation, which is not one whit different from the all expense tour service presently available on scheduled airlines, except for the cut-rate involved.

9. The only answer to this situation is to place a provision in the regulations which would *require* a tour group to move, as a unit, to each point on a tour, and to *prohibit* a supplemental air carrier from providing return transportation to any tour member who did *not* accompany the group to all three points, thereby requiring the tour member to pay for his own transportation back to the point of origination of the tour. Such a provision would help to implement the stated objective of the Board in the three-stop requirement. Opposition to such a provision on the part of either the supplementals or the tour operators in answers to this petition for reconsideration would simply demonstrate that they really do have cut-rate point-to-point air transportation in mind, *not* a tour program. The

filing of such oppositions would thus warrant the majority immediately reversing its decision to inaugurate the all expense tour charter program.

---

[1] E.g. A tour operator could package a 10 day "tour" over Christmas to Miami (for 8 days) and to Key West and Clearwater (for one day each.) With the cut-rate on air transportation to Miami embedded in the charter package price, the traveler could still come off ahead economically by not using the coupons for the Key West/Clearwater portion of the tour, and by purchasing additional accommodations for two days in Miami on his own.

10. (ii) *Restriction against scheduled service.* The record is unequivocally clear that the dominant, if not exclusive, focus of all expense tour charters will be to established resort markets such as Florida and Hawaii. CTOA, an association of tour operators, has stated to the Board that "... the safest and easiest way of lessening the risk (to a tour operator) is to promote tours only to markets which are already well developed."[1] Camino Tours candidly stated that "it is obvious that tour basing charters should be offered to areas where mass markets exist already now with the aim to expand such mass markets."[2] Accordingly, it is inevitable that a scheduled "tour" service will be developed either by a single prominent tour operator, or by a combine of tour operators, to existing mass-travel resort markets. Advertisements will shortly appear in mass media announcing "jet departures every Friday evening at 8:00 P.M.", or some similar schedule. Indeed, during the season, advertisement of *daily* departures at a set time can be anticipated to resort points.

11. The supplementals assert, and the majority appears to have bought their assertion (Opin. p. 11), that scheduled tour charters are not supposed to happen. If this is so, then the supplementals should most certainly not object to a provision in the regulations which would prohibit performing, or holding out, scheduled tour charters. If they *do*

object, then their assertions become suspect, to say the least. The point is that a *scheduled* tour service is com-

[1] Comments, Docket 15777, p. 7.

[2] Comments, Docket 15777, p. 2.

pletely incompatible with a charter service envisioned by the majority and this fact should be made crystal clear by a provision prohibiting the performance of, or holding out of, any such service.

12. (iii) *Minimum price.* The arguments advanced by the supplementals during the course of this proceeding in connection with the issue of fixing a minimum tour price stripped away the facade of their argument of an alleged "public" need for "low cost" all expense tour service. It became apparent that their interest was *not* in low-cost public service. What they wanted was a guaranteed source of diverted revenues by artificial restrictions which would positively assure the opportunity to under-cut the fares of the scheduled carriers, no matter *what* efforts the scheduled carriers made to provide the public with lower promotional and discount fares. Thus they objected vigorously to the examiner's proposal that the tour price be no less than 110% of the lowest *basic* scheduled fare, and argued, in its stead, that the minimum price should be pegged to a percentage of the lowest *available* scheduled fare, including discount fares. Unfortunately, the majority appears to have succumbed to this argument for it rejected the examiner's proposal and adopted that of the supplementals. (p. 18)

13. The Joint Intervenors request a reconsideration of this conclusion on the basis of the public interest arguments advanced by the majority *itself* in favor of the all expense tour program. The majority does not see this program as a private bill for the supplementals through a methodology of price fixing which would guarantee the supplementals the absolute right to cut-rate scheduled air carriers. Indeed, it

could hardly do so in view of the fantastic profits (and stock prices) of the large supplementals who control the bulk of the business. What it did envision was a manner to bring lower cost transportation to the general public. If this is so, then it most certainly should not have succumbed to the private need philosophy underlying the supplementals' attack on the concept of pegging the price to the lowest basic fare. That philosophy is *anti* low fares. The whole premise of the argument is that minimum prices should be geared to a percentage of the lowest discount fare, rather than the lowest basic fare, because the latter standard might encourage the scheduled carriers to place into effect *more* discount fares which would benefit the public!

14. Further, the minimum price adopted by the Board is *lower* than that recommended by both ASTA and CTOA, the two principal tour operator associations. These associations suggested an all expense tour minimum charge constructed at *125%* of the lowest discount fare, not the 110% adopted by the majority.[1] Minimum prices constructed at 125% of the lowest discount fare, to say nothing of minimum prices constructed at 110% of the lowest discount fare, could permit instances of a tour price (hotels, meals, air transportation—everything) below the scheduled basic air fare. Thus tour operators could offer a complete package in an advertisement ending up with the dramatic enticement of "A PRICE LOWER THAN WHAT YOU WOULD PAY FOR JUST THE LOWEST BASIC FARE

[1] Comments, Docket 15777, ASTA (p. 5), CTOA (p. 11).

ON A SCHEDULED AIR LINE." A moment's reflection on this matter should instantly resolve any doubt the validity of the contention made by the Joint Intervenors that the all-expense tour program will subject the pleasure travel now moving on a scheduled airlines to massive diversion. Patently, if the majority does not reverse itself on the all inclusive charter program, as it should, it should at least establish a minimum price as a percentage of the lowest basic fare, not the lowest discount fare.

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15. A final reason for moving from a percentage of the lowest discount fare to one of the lowest basic fare relates to all of the conditions surrounding discount fares in the tariffs of the scheduled air carriers which would also have to be followed in constructing an all expense tour price. Such discount fares as family fares, children's fares, and fares for special classes of persons are all subject to a variety of terms and conditions in scheduled carriers' tariffs. How would children's fares come into the computation of a tour price which would principally be attractive to adults? How could a single family-fare tariff be worked into a tour price when family plan rates vary according to the number traveling? It is simply impossible to relate minimum prices for all expense tours to the wide variety of terms and conditions of the promotional and discount fares of scheduled air carriers. The *only* intelligible standard is that of the lowest *basic* fare.

16. (iv) *Waivers.* Part 378.30 of the proposed regulations reads that "a waiver of any of the provisions of this regulation may be granted by the Board upon its own

initiative, or upon the submission by a supplemental air carrier of a written request therefor, provided that such a waiver is in the public interest and it appears to the Board that special or unusual circumstances warrant a departure from the provisions set forth herein." In the opinion of the Joint Intervenors this provision is entirely too broad and substantially weakens the integrity of the entire regulatory framework devised by the Board for all expense tour charters. There is simply no point in setting up a detailed administration for the tour program, and then to permit midnight waivers. The exemption provisions of the Act are sufficient to cover any needed deviations.

Three-split charters

17. In challenging the authority of the Board to permit split charters, the supplemental carriers argued to the

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American court that a two-split charter was just the beginning of the fragmentization of "charter" into a three-split, four-split, fifty-split, etc., etc., and that the word "charter" would soon become meaningless. The court, however, limited its holding to the two-split issue then before it. It said:

> ". . . whatever the limits on the Board's power of definition (of 'charter'), those limits are not breached by a definition which permits two groups to charter one half an aircraft each." 348 F. 2d 349, 354 (1965)

18. In this case the inching fragmentization has begun. The Board has now moved from a two-split to a three-split

charter. Particularly when coupled with the provision that three different tour operators can place aboard a single "chartered" aircraft groups of 40 persons solicited from the general public as part of an all expense tour, this authorization cannot stand. What the supplementals want, as indicated from their comments in Docket 15777 is to be able to market "a single tour . . . in several cities, either by the operator or retail outlets" because whereas "each city could not be counted on for a jet load, . . . several cities together could do so."[1] There it is: a scheduled service between a number of originating and destination points, with passengers on board solicited from the general public. Patently such a service constitutes individually ticketed travel which the *American* court held to be inconsistent with the charter concept.

Conclusion

Wherefore, the Joint Intervenors respectfully request the Board to reconsider its decision in the above-captioned proceeding and, after such reconsideration, to deny all applications of the supplementals herein to provide all inclusive tour charters to tour operators, and to provide three-split charters. The Joint Intervenors further request, in the event that the Board does not deny said ap-

plications to provide all inclusive tour charters, that amendments be made to the regulations governing all expense tour charters in the manner set forth above. Finally,

[1] World Comments, Docket 15777, p. 8.

the Joint Intervenors request such other or different relief as the Board may deem appropriate in the premises.

Respectfully submitted,

POGUE & NEAL

By: /s/ JAMES F. BELL

James F. Bell

Attorneys for
American Airlines, Inc.,
Braniff Airways, Inc.,
Continental Air Lines, Inc.,
Delta Air Lines, Inc.,
Eastern Air Lines, Inc.,
National Airlines, Inc.,
Northwest Airlines, Inc.,
Pan American World Airways, Inc.,
Trans World Airlines, Inc.,
United Air Lines, Inc., and
Western Air Lines, Inc.

April 4, 1966

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Petition for Reconsideration upon all parties of record in accordance with the Rules of Practice.

/s/ JAMES F. BELL

James F. Bell

April 4, 1966

(12008)

12008

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Docket 13795, *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

JOINT ANSWER TO PETITIONS FOR RECONSIDERATION

of

American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc.

Communications with respect to this Petition should be sent to:

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Washington, D. C. 20036

April 11, 1966

12009

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

JOINT ANSWER TO PETITIONS
FOR RECONSIDERATION

of

American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc.

Now come the above-named Joint Intervenors to answer the Petitions for Reconsideration of the decision in the above-captioned proceeding.

1. *All expense tour charters.* Creative Tour Operators Association, Inc. (CTOA), was the only petitioner for reconsideration commenting upon the provisions of Part 378 of the Board's regulations relating to inclusive tour char-

ters.[1] The responses of the Joint Intervenors to those comments are as follows:

a. *Minimum charter tour price.* The Board has proposed a minimum charter tour price at a percentage of a base consisting of the lowest discount fare of the sched-

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uled carriers. CTOA would drive the base down further. It would substitute *bus* fares for air fares in short-haul markets.

CTOA states that supplemental all expense tour charters, in order to be salable to the public, "must have substantially cheaper prices than tours on scheduled carriers." (p. 2) CTOA says this is so because, among other reasons, "travelers are not as familiar with the supplemental carriers . . . " as they are with scheduled carriers. Thus CTOA argues that the Board should adopt a policy of *price fixing* which would *guarantee* supplementals the absolute right to cut-rate scheduled air carriers. This policy is thus designed to discourage the scheduled carriers from serving the public interest by placing into effect lower discount fares because of their possible effect on supplemental all expense tour charters. Such an extraordinary anti-competitive philosophy has no place whatever in the framework of the language or policy of the Federal Aviation Act of 1958. If the majority in this case does not reverse itself completely on the all inclusive charter program, a minimum tour charter price should be established as a percentage of the lowest *basic* air fare, not the lowest discount air fare.

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[1] The American Society of Travel Agents (ASTA) joined with CTOA in its opposition to certain aspects of the requirements of Part 378 for a bond.

b. *Minimum passengers for three-split charters.* The fragmentization into unlawful individually ticketed travel inherent in three-split charter decision of the Board is further evidenced by CTOA's suggestion that the provisions of Part 378.2(5) be changed to permit three groups of less than 40 board a single "chartered" aircraft. CTOA says that tour operators will try to sell more than 40 persons on each group; that they will not "hold out that they will accept less than 40 passengers per group"; but that if they fail to sell a group of 40, they would still like to

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carry the group. What CTOA is seeking is an advance, blanket, waiver permitting it to substitute smaller groups. Also inherent in the request is the ability to substitute smaller aircraft. On the basis of a 21-seat DC-3, the result could be a tour "charter" for three groups of seven persons each. Patently this whole business is tantamount to individually ticketed travel.

c. *Definition of tour operator.* CTOA has also highlighted one very important reason for rejecting the whole concept of all expense tour charters. It has noted that ". . . hotels or other persons who will participate in furnishing goods or services to the tour passengers" can provide all expense tour charters, and that "such persons have a distinct advantage over the non-affiliated tour operator because the cost of their own facilities is, of course, lower to them than it is to tour operators who must buy such facilities." (p. 4) This is *precisely* what the Joint Intervenors said could happen: large Miami hotel chains running their own New York-Miami air service with a couple

of side stops thrown in. This pattern can be repeated at Las Vegas, Honolulu, and a myriad of other resort points. Such a program will be highly diversionary of tour traffic now generated by the travel agents and moving scheduled airlines. Such a program, as the tour operators have apparently finally recognized, can be disruptive of the mutually advantageous partnership between the scheduled airlines and travel agencies which has done so much to promote the growth and development of air transportation in this country.

d. *Bonds.* Finally CTOA has set out to further weaken the already legally defective screening requirements of Part 378 by seeking a reduction in the amount of the bond, a change in its character (from surety to fidelity), and a shift of responsibility in part to the supplemental. The entry of a large number of indirect air carriers into the

business of providing indirect air transportation anywhere and any time they like, under the inadequate screening and protection proposed in Part 378, with or without the amendments proposed by CTOA, would be completely inconsistent with the system of *regulated* air transportation in the Federal Aviation Act.

2. *Cargo split charters.* Zantop's petition for reconsideration relates to the decision of the Examiner, sustained by the Board, to deny its request for split cargo charter authority. The ground for the petition is that this issue got "lost" in the complexity of this case. (p. 2) The issue got "lost" because of the absolute paucity of evidence submitted in the record to support any such proposition,

and the failure of any applicant to advance any "convincing reasons" for the adoption thereof. (RD-69) Indeed, Zantop was among a group of joint applicants which *abandoned* their request for split cargo charter authority by failing to include any additional revenue in their forecast to reflect the grant of any such authority. (J-333) Zantop, alone among the supplementals, now tries to revive that dead issue. Its request must be denied.

3. *Part 208.* The bulk of the petitions for reconsideration filed by the supplementals solely relate to suggested revisions in the proposed Part 208 dealing with affinity charters. It is not strange that even though the formulation of regulations relating to affinity charters has been at issue ever since this case commenced, this is the *first* time any of the supplementals have devoted any time or attention to that matter. The fact is that the supplementals have been so preoccupied during the course of this proceeding with the desirability of all expense tour charter authority, that they utterly neglected *any* discussion of affinity charter regulation until this late date.

The gravamen of their complaint is that Part 208 fol-

lows Part 295, which sets forth the regulations worked out by the Board over the years relating to transatlantic charters provided by *supplementals,* rather than Part 207, which sets forth rules and regulations relating to charters provided by *scheduled* carriers. The supplementals claim "discrimination" in the necessity, for example, of having to produce paperwork not required of the scheduled carriers.

The answer is obvious. The principal business offered by the scheduled carriers is scheduled service which is

regulated by the Board in a manner totally inapplicable to the supplementals. The principal business of the supplementals is (or should be) the provision of affinity charters. The petitions filed by the supplementals never quite make it clear just why the Board would be acting in a discriminatory manner unless it regulated the principal business of the supplementals in the same manner as it regulates a collateral function of the scheduled carriers.[1]

The supplementals further claim that domestic charters are somehow different from transatlantic charters and are, therefore, entitled to a more "flexible" regulatory environment. They are wrong. Regulations are not invented *per se*. They are developed to meet and control certain objectionable practices. The record in this proceeding contains a recitation of objectionable practices relating to *domestic* supplemental charters in a Letter of Mr. J. G. Adams, Director, Bureau of Enforcement, dated December 11, 1964 to Capitol, World, and TIA (JI-1158). The Examiner summarized these objectionable practices in his Recommended Decision at pp. 131 and 132, and concluded, at RD 133 that "The regulatory tools for coping with many of these difficulties will be provided if, as has been recom-

mended, the basic scheme of Part 295 is extended to govern the interstate, overseas, and other foreign supplemental air transportation operations of the supplemental

[1] It might also be noted that in picking and choosing provisions of Part 207 which the supplementals assert should be included in Part 208, the provisions of Part 207 limiting charters by scheduled carriers between the mainland and Hawaii were notably omitted!

air carriers." The Board correctly adopted his recommendation.

WHEREFORE, the Joint Intervenors respectfully request the Board to deny the petitions for reconsideration filed by the parties in this proceeding to the extent set forth above.

Respectfully submitted,

POGUE & NEAL

By: /s/ JAMES F. BELL
James F. Bell

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Northwest Airlines, Inc.,
Pan American World Airways, Inc.,
Trans World Airlines, Inc.,
United Air Lines, Inc., and
Western Air Lines, Inc.

April 11, 1966

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Answer upon all parties of record in accordance with the Rules of Practice.

/s/ JAMES F. BELL
James F. Bell

(12044)

12044

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Docket 13795, *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

MOTION TO STAY OF

American Airlines, Inc., Braniff Airways, Inc., Continental Airlines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc.

Communications with respect to this Motion should be sent to:

POGUE & NEAL
1001 Connecticut Avenue, N. W.
Washington, D. C. 20036

April 11, 1966

12045

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

SUPPLEMENTAL AIR SERVICE PROCEEDING

Docket 13795, *et al.*

MOTION TO STAY OF

American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc.

Now come the Joint Intervenors[1] in the above-captioned proceeding and, pursuant to Section 1005(d) of the Federal Aviation Act of 1958, 49 U. S. C. 1484(d), and Section 10(d) of the Administrative Procedure Act, 5 U. S. C. 1009(d), move to stay the effectiveness of all authority granted to the supplementals as a result of this proceeding to provide inclusive tour "charters" and three-split "charters", until final judicial resolution of the question of whether the Board

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[1] American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines Inc., Delta Air Lines, Inc., Eastern Air Lines Inc., National Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc.

has the statutory authority to permit supplementals to provide such service. In support whereof, the Joint Intervenors state as follows:

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1. Two members of the Board, constituting a majority of the three members participating in this case, have held that the Board has the statutory authority to permit supplementals to charter aircraft to travel agents which, in turn, may sell individually ticketed travel to the general public as part of an all expense tour. Judge Gillilland, the third member of the Board participating in the case, filed a [illegible] page dissent demonstrating that inclusive tour charters do not constitute "charter trips in air transportation", and, therefore, supplemental air transportation within the meaning of Section 101(33) of the Federal Aviation Act of 1958, as amended.

2. The Joint Intervenors believe that the two members of the Board asserting statutory authority to permit supplementals to provide all inclusive tour charters have erred for the reasons set forth in Judge Gillilland's dissent. They further believe that under *Flothill Products, Inc. et al.* v. *Federal Trade Commission,* No. 19521, decided by the Court of Appeals for the Ninth Circuit on March 16, 1966, two members of the Board may not enter a final order reaching the conclusion of law and policy of the type embraced in a determination to permit supplementals to provide all inclusive tour charters. Understandably, therefore, the Joint Intervenors intend to seek judicial redress. At the same time, they will challenge the decision to permit supplementals to provide three-split charters, particularly insofar as such an authorization will permit three different tour groups

solicited from the general public as part of an all expense tour, which groups may be located in three different cities, to board a single "chartered" aircraft.

3. Surely everyone will agree, at the outset, that the question of whether the Board has the statutory authority to permit supplementals to provide all inclusive tour charters is "close". The division between the three members

of the Board participating in the case demonstrates that fact. Indeed, the annals of Board decisions may be searched in vain for a decision of such drastic, and national, significance, which has been decided by only two members of the Board and where there has been such a powerful and cogent dissent. The point is that the question herein involved is, ultimately, the type of question which must be decided in court.

4. These circumstances should, in and of themselves, warrant the issuance of an administrative stay. The case of the Joint Intervenors on the issue of law is not marginal. It is strong. Accordingly, justice requires that before the Board permits implementation of a construction of the term "charter", *never* before made in the entire 28-year history of the Federal Aviation Act of 1958, and of its predecessor, the Civil Aeronautics Act of 1938, it should await judicial resolution of the question of whether the Board has statutory authority to permit all inclusive tour charters.

5. The very "closeness" of the issue requires a stay for another—controlling—reason. It is not possible to overstate the chaotic results which would follow if, in the midst of a

massive all inclusive tour charter program, a judicial determination were made invalidating the two-member decision that the Board has the statutory authority to permit such service. Literally thousands of innocent travelers and families could have their long-planned vacations destroyed. This is not the simple case of an existing carrier protesting a duplicating route award where, in the event of judicial termination of the duplicating route award, the traveling public may suffer some inconvenience in switching to another airline. This is a complex case of a program involving a *package* including reservations for specific hotels and many other activities, all of which will fall into a confusing tangle of broken vacations in the event of judicial

termination of the program. It is not enough to say that any such result will be the court's "fault", rather than that of the Board. The point is that there is a real uncertainty as to whether the two-member decision will be overturned. Surely no fair-minded person would discount that possibility. That fact should, therefore, be the dominant and compelling consideration in Board action upon this motion to stay. If *ever* there was a case for an administrative stay, this is it.

6. And let it *never* be forgotten that it is the *public* which will suffer. Both tour operators and supplementals are aware of the uncertainty created by the fact of judicial review and the "closeness" of the issue. Their counsel will, of course, advise them how to "cover" themselves so as to avoid financial liability in the event of a judicial mid-tour termination. And so it is the prospective vacationer who

will suffer—not the corporations with whom he may be dealing.

7. The suggestion may be made by the supplementals that the extent of human injury has been overstated by the Joint Intervenors because, until the conclusion of judicial review, nobody is really going to seriously promote all inclusive tour charters. American Flyers, one of the supplementals, candidly implied such a suggestion when it said in its Petition for Reconsideration filed in this case on April 4, 1966:

> "The opportunities afforded supplemental carriers by inclusive tour authority are beclouded by the questions raised by the scheduled carriers as to the legality of the Board's action." (p. 2).

Assuming, *arguendo,* the validity of such a suggestion, can the supplementals honestly claim any "injury" if a stay is granted pending judicial review? Should the Board permit a program to get underway in the atmosphere of such un-

certainty and under circumstances where the corporations involved will so *caveat* themselves that all of the injury will fall on the traveling public in the event of judicial termination? Is it in the public interest to permit a program of such a broad sweep to get underway even if just a few members of the public may be adversely affected? The Joint Intervenors think not and, therefore, strongly urge the Board to grant the stay requested herein.

8. The *public* interest considerations set forth above should control the disposition of this motion and render

unnecessary any effort to balance equities between the Joint Intervenors, on the one hand, and the supplementals, on the other. However, even on such a "balance", equity lies with the Joint Intervenors. It must be remembered that it is the *tour operator* which will determine where, when, and how an all inclusive tour will be operated. The supplementals will simply furnish the transportation vehicle and driver. And CTOA, an association of *tour operators,* has stated to the Board that ". . . the safest and easiest way of lessening the risk (to a tour operator) is to promote tours *only to markets which are already well developed.*"[1] (Italics supplied). It is, therefore, impossible to assert that the Joint Intervenors will not be harmed by a diversion of revenue during the period an all inclusive tour program may be operated prior to judicial termination. But the harm which they will suffer goes far beyond just the dollars involved. As the Examiner found—a finding which was *adopted* by the Board—the scheduled airlines have spent "considerable time, effort, and money" on "the development of all expense tours in both domestic and international air transportation". (RD-52). The evidence

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of record introduced in this case show a 20-year history of all expense tour promotion and service to hundreds of thousands of Americans including, for example, the widely distributed current 353-page Consolidated Air Tour Manual listing some of the hundreds of tours of all descriptions available on the scheduled carriers which meet every conceivable taste of a prospective tourist. (RD-51-53). Sales in such tours amounted to almost $100 million in 1963. (RD-

[1] Comments, Docket 15777, p. 7.

54). The Joint Intervenors believe that their investment in the all expense tour program would be substantially jeopardized by the "sour taste" which the public would experience by the institution of a massive program of all expense tour charters using supplemental aircraft which was subsequently terminated by a court.

9. Finally, it will be noted that the stay sought by the Joint Intervenors is narrow in scope. They have no objection to the effectiveness of the certificates and related regulations issued herein insofar as they concern the performance of affinity charters. This motion is solely directed to all expense tour charters, and three-split charters. The Joint Intervenors also assure the Board that they will promptly seek judicial relief immediately following action upon its petition for reconsideration filed herein, and assuming denial of the same.

WHEREFORE, the above-named Joint Intervenors respectfully move the Board to stay the effectiveness of all authority granted to the supplementals as a result of this proceeding to provide inclusive tour "charters" and three-split "charters", until final judicial resolution of the ques-

tion of whether the Board has the statutory authority to permit supplementals to provide such service. They fur-

(12051)

ther request any further or different relief which the Board may deem appropriate in the premises.

Respectfully submitted,

POGUE & NEAL

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Trans World Airlines, Inc.,
United Air Lines, Inc., and
Western Air Lines, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Motion upon all parties of record in accordance with the Rules of Practice.

/s/ JAMES F. BELL
James F. Bell

April 11, 1966

12093

Order No. E-23600

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 29th day of April, 1966

Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

SUPPLEMENTAL OPINION AND ORDER ON RECONSIDERATION

Petitions for reconsideration of the Board's opinion and order in the above-entitled proceeding (Order E-23350, March 11, 1966), and for other relief, have been filed by various parties.[1] Answers in support of, and in opposition to, the petitions have also been filed.[2] Upon consideration

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[1] AAXICO Airlines, American Flyers Airlines, American Society of Travel Agents, Capitol Airways, Conner Air Lines, Creative Tour Operators Assn., Holiday Airways, Joint Intervenors, Overseas National Airways, Saturn Airways, Trans International Airways, United States Overseas Airlines, World Airways, and Zantop Air Transport.

[2] Answers were submitted by Airlift International, American Society of Travel Agents, Bureau of Operating Rights, Capitol, Creative Tour Operators Assn., Flying Tiger Line, Joint Intervenors, and Saturn.

of the matters submitted, we find that except to the extent hereinafter indicated, reconsideration of our decision, or the grant of the other relief requested, is not warranted.

1. Conner Air Lines and Holiday Airways, whose applications for supplemental certificates were denied now request that the record be reopened for further hearing on their qualifications. They contend that since the Board reopened that record to give ONA and Standard a second chance to establish fitness and ability they should be af-

forded a similar opportunity, and that further hearings would not prejudice the case of any other applicant.

Although on the record before it the Board could not find ONA and Standard qualified, there were special circumstances affecting those carriers which fully justified further hearings on their applications. Thus, the Board had knowledge that, contrary to the record in this proceeding which showed that ONA was dormant, ONA had resumed operations as a supplemental air carrier under its interim certificate and was currently providing services. Further, the Board had before it for decision the *Reopened Transatlantic Charter Investigation,* Docket 11908 *et al.,* in which the hearing examiner, on a more recent record, had found ONA fit, willing, and able, and had recommended that it be issued a certificate authorizing it to provide transatlantic charter services. In the case of Standard, the Board only a short time before its decision in this case had issued a decision in another proceeding in which it found Standard qualified to provide services as a supplemental air carrier and terminated the prior suspension of

the carrier's interim certificate authorizing it to engage in supplemental air transportation. While the Board could not rely on the records in those cases in disposing of the carriers' qualifications in the present proceeding, it obviously could not close its eyes to the significant changes that have occurred. There were no comparable considerations that would warrant further hearings on the applications of Conner and Holiday.

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Holiday and Conner have not established error in the Board's prior conclusion that they are not fit, willing, and able, nor have they presented new matters that would warrant reopening the record for further hearing on their qualifications. Holiday alleges, *inter alia*, that it now owns a DC-3 aircraft, that it has made a substantial deposit toward the purchase of a DC-7 aircraft to be delivered to it within a few days of the filing of its petition, that it has been successful in developing a major contract source for the utilization of the DC-7, and that it has additional commitments for financing its proposed operation. Holiday was given a full opportunity to present to the examiner all relevant evidence bearing on its fitness. Indeed, the examiner held the record open to afford the applicant an opportunity to submit a contract with a large firm to utilize its services which the applicant alleged was imminent. It failed to avail itself of the opportunity afforded it.

Although Holiday now makes various assertions as to its current qualifications, it has not, with the exception of the claimed ownership of a DC-3 aircraft, backed its allegations with supporting data. Thus, it has not attached copies of the contract that it claims to have successfully

developed, of specific agreements covering new financial commitments, of the contract for the purchase of the DC-7, or of the financial arrangements under which it is being purchased. In short, the petition, viewed against the background of the numerous shortcomings of Holiday's presentation at the hearing before the examiner, falls far short of the type of specific showing that would warrant vacating the Board's prior determination and reopening the record for further hearing on the applicant's qualifications.

12096

2. ONA seeks reconsideration of the Board's action directing further hearings on its application, and requests that the Board determine its current fitness by taking official notice of its Form 41 reports, of the record in the *Reopened Transatlantic Charter Investigation, supra,* or both. ONA alleges that the further hearings will place it at a competitive disadvantage, since it will lack in the interim the inclusive tour authority granted other applicants; will prejudice its equipment-financing plans; and will deprive it of comparative consideration with other applicants for overseas and international authority.

We will deny ONA's petition. Although the burden that the further hearings may place on ONA is regrettable, we conclude that under the circumstances here the Board would not be justified in evaluating the applicant's fitness on the basis of raw Form 41 data which the parties to the proceeding have not had an opportunity to challenge, or upon evidence in another proceeding involving different parties and issues. However, in order to expedite the hear-

ings, we will direct that the record in the *Reopened Transatlantic Charter Investigation* relating to ONA's fitness to provide transatlantic charter services be consolidated into, and made a part of, the record in the reopened proceeding.[3]

12097

Pending Board decision on its application, ONA will be free to apply for an amendment of its interim certificate that will authorize it to operate inclusive tour charters pursuant to the provisions of Part 378 of the Board's regulations.

3. AAXICO requests that the Board reconsider the denial of its application and defer action on it. Since the Board by Order E-22680 approved the merger of AAXICO into Saturn, AAXICO's independent application in the present proceeding was treated as moot.

However, as AAXICO points out, a petition for review of the Board's order is now pending in court and it is possible for the merger to be set aside and for AAXICO to reemerge as an operating entity. We will, therefore, grant the carrier's request and defer action on AAXICO's application until further order of the Board.

12098

4. The applicants granted supplemental air carrier certificates have raised a number of objections to Revised Part 208 of the Board's Economic Regulations governing their domestic charter operations. The primary focal points

[3] We will leave to the examiner the procedures for designating the portions of the record upon which the parties wish to rely, and for insuring that the parties are accorded the opportunity of rebutting such evidence.

of the carriers' objections in this regard are the various reporting, record retention and documentation requirements which would be imposed for the first time on domestic charters by Part 208.[4] It is alleged that these requirements are unnecessary and unduly burdensome and that the supplementals will be placed at a competitive disadvantage since similar obligations are not imposed at the present time by Part 207 of the Board's Economic Regulations with respect to domestic charters performed by scheduled carriers. On reconsideration, we have determined to delete these requirements,[4a] at least for the present, subject to a study of the matter on an industry-wide basis.

However, contrary to the requests of the supplementals, we have decided to retain intact those regulatory provisions concerning charterworthiness of affinity groups. These provisions, which are derived from Part 295, were at issue in this proceeding and are designed to assure that charter groups are *bona fide*. Moreover, there has been no showing that the imposition of these requirements will place supplemental carriers at a significant competitive

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disadvantage with respect to charters performed by scheduled carriers pursuant to Part 207.[5]

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[4] The reports or documents to which reference is made are Statements of Supporting Information (§§208.34(a), 208.204 and 208.216), Post Flight Reports (§208.214(b)), and passenger manifests (§208.215).

[4a] We are retaining, however, that portion of §208.215 (Passenger manifests) which requires the charterer to file with the carrier the names and addresses of the passengers. This will enable the carrier, in turn, to comply with §208.4, which requires it to maintain such information for each charter trip.

[5] We intend to initiate appropriate proceedings to bring Parts 207, 208 and 295 into conformance.

We are also rejecting the proposal that the travel agents' commission on supplemental charters be increased to 10 percent of the charter price. Under §§208.202 and 208.302 the commission has been set at 5 percent or at the rate paid by certificated carriers for similar service, whichever is greater. There is no showing that this rate, which is generally paid for domestic agency generated traffic, will not provide adequate incentives for development of charter business.

It has also been requested that applications for a waiver from the regulatory provisions should be fileable up to 10 days prior to the charter flight, rather than 30 days. While not adopting this particular change, inasmuch as the Board normally needs the full 30 days to process a waiver request, we are amending §208.3a to provide that a waiver application filed less than 30 days prior to the flight may be accepted in emergency situations where the circumstances warranting the waiver did not exist 30 days prior to the flight.

Capitol urges that §208.101, as well as condition (1) of the supplemental certificates, be amended to exclude one-way services purchased by the military under commercial charter tariffs from the minimum rates in Part 288. This proposal was presented for the first time on reconsideration, although addressed to a regulatory provision which has been in effect for several years.[6] Accordingly, disposi-

12100

tion of this question cannot be made on the basis of the present record. The Board will, however, devote further

[6] The predecessor to §208.101, and substantially identical thereto, is former §208.30, which has been in effect since 1962.

study to the matter, with a possible view toward institution of an appropriate rule making proceeding.[7]

5. Several parties urge that a number of changes should be made to Part 378 of the Board's Special Regulations,[8] which governs the operation of inclusive tour charters. Among the proposals advanced by the trunklines are the following: (a) prohibiting return transportation to any tour participant who failed to accompany the group to all three intermediate stops; (b) prohibiting the performance, or holding out, of scheduled tour service; (c) deleting the provision (§378.2(b)(5)) which permits an aircraft under charter to one tour operator to carry tour groups of at least 40 participants; (d) deleting the provision (§378.30) which allows a waiver of the provisions of Part 378 under certain circumstances. We find that the foregoing proposals would be unduly burdensome and restrictive and unnecessary to prevent diversion of scheduled traffic or to assure the integrity of the charter concept. Accordingly, they will not be adopted.[9]

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[7] We have made certain amendments to Part 208 to make clear that (1) the requirement that the charter price be paid in advance, (2) the restrictions against carriage of one-way passengers on round-trip flights and against intermingling of passengers under contracts for two or more round-trip flights, and (3) the requirement that the carrier shall refund to the charterer any sum charged for ferry mileage which is not in fact flown, are not applicable to single entity and military charters. See §§208.103, 208.301.

[8] This regulation was issued as SPR-14 in conjunction with the original opinion.

[9] We are also rejecting the request of the Creative Tour Operators' Association (CTOA) that tours be allowed to commence despite the fact that a group numbers less than 40 at departure time, provided that the tour be "held out" for a minimum of 40 passengers. Such an amendment would render §378.2(b)(5) unenforceable.

Amendments to the minimum price provision (§378.2(b)(4)) have been advanced both by the trunkline carriers and by CTOA.[10] However, for the reasons set forth in our original decision, we believe this provision as currently constituted represents a reasonable accommodation of the various conflicting interests. We will also reject, as being without support, CTOA's request to exclude from the definition of "tour operator" anyone who himself is, or is controlled by, a hotel or other person who will participate in furnishing goods and services to the tour passengers. We are not persuaded at this time that such a definition is necessary to prevent unfair competition among tour operators,[11] in view of the conditions imposed by Part 378 upon tour operations.

Finally, CTOA and the American Society of Travel Agents (ASTA) contend, as they did in the original proceeding, that the surety bond amount of twice the charter price is excessive and out of proportion to the risk involved. There has been no showing, however, that the bond

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[10] The trunklines argue that the tour price should be keyed to basic, rather than promotional or discount, scheduled fares, while CTOA contends that the price formula should provide for (1) a construction including the lowest cost form of transportation (i.e., surface transportation) between intermediate tour stops and (2) use of scheduled propeller fares where the tour transportation is provided via such aircraft.

[11] As originally adopted, Part 378 would preclude supplemental air carriers from acting as tour operators. We are expanding this provision to cover all direct air carriers. (See §378.2(d).) It should also be noted that control relationships between air carriers and tour operators are prohibited by section 408 of the Act in the absence of Board approval. (See §378.3.)

(12101, 12102, 12103)

would result in excessive costs.[12] If the cost subsequently proves in fact to be unduly burdensome, appropriate

12102

changes in this provision can be accomplished at that time. We also reject the suggestion that the carrier should be required to assume a portion of the bonding obligation. Any arrangement made by the tour operator to insulate himself against the carrier's failure to perform should be left to the tour operator and the carrier, thus leaving the tour participant to look, in the event of an aborted tour, to the tour operator, who has the primary responsibility in such a situation.[13]

12103

6. The award of inclusive tour and split charter authority to the supplemental carriers was made by a two-to-one vote, and it is asserted that the decision is invalid in light of the recent decision by the United States Court of Appeals for the Ninth Circuit in *Flotill Products* v. *Federal Trade Commission* (No. 19,521, March 16, 1966). The Court there held (p. 7 of slip opinion) that an order of the five member FTC "must be supported by three members in order to" be enforceable. Chairman Murphy has now qualified himself and cast his vote with Vice Chairman

[12] CTOA estimates that the bonding cost for a tour having a $30,000 charter price would amount to approximately $13.13 per passenger for a 180 seat aircraft.

[13] We have determined on our own initiative to amend Part 378 so as to delete the verification requirements contained therein, which impose the burden of obtaining notarizations. These requirements are unnecessary in view of 18 U. S. C. 1001, which imposes criminal punishment for false statements made in documents such as those required under Part 378.

Murphy and Member Minetti in favor of the inclusive tour and split charter awards, and the decision now has the support of a majority of the Board.[14] In these circumstances, the *Flotill* decision is inapposite to the factual situation presented, and, in our view, does not in any event govern proceedings before this Board.[15]

7. The trunklines have requested that the Board stay the effectiveness of the inclusive tour and split charter authority granted to the supplemental carriers until final judicial resolution of the legal question of whether the Board has the statutory authority to permit supplementals to provide such service. In support of their motion,

the trunklines argue that (1) the question of whether the Board has the statutory power to grant such authority is close; (2) the grant of a stay would not adversely affect the supplementals, but a denial thereof would have a substantially damaging impact on scheduled carriers; and (3) chaotic results would follow if in the midst of a massive tour program the court invalidates the Board's decision.

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[14] There is appended to this order a separate statement by Member Adams setting forth his reasons for not participating in the decision in this proceeding.

[15] Unlike the Federal Trade Commission Act, the Federal Aviation Act specifically provides (Section 201(c)) that "[t]hree of the members shall constitute a quorum of the Board." The *Flotill* decision recognized, we believe, that the reasonable construction of this specific congressional provision "would be that a majority of a quorum would be sufficient to render a decision" (slip opinion, p. 6). The Board members unanimously concur in the view that a decision by a majority of a quorum is legally sufficient under the Federal Aviation Act.

We have determined to deny the motion. Apart from our view that we have correctly interpreted the statute, there is no showing that the trunkline carriers will suffer any significant adverse impact from the prompt implementation of the authorizations. As we found in our original opinion, the extent to which persons patronizing inclusive tours would otherwise travel by air can only be the subject of speculation, and such diversion from scheduled services as may be occasioned by inclusive tour charters will be insignificant in relation to the total traffic and traffic growth of the trunkline carriers. The same is clearly true of the split charter authority. Moreover, grant of a stay *pendente lite* would deny to the public the benefits of a new low-cost transportation service for an extended period of time. The carriers' prediction of chaotic results following any judicial reversal of our inclusive tour determination appears grossly overstated. There is no reason to believe that any tour group will be stranded or that the courts or the Board will be unable to deal appropriately with any hardship situations which might arise. To be sure, a judicial reversal might require a number of persons to alter their future

vacation plans, but that contingency does not justify depriving the general public as well as the supplemental carriers of the benefits of inclusive tours while this matter is being litigated in the courts.[16]

We have considered the remaining matters set forth in the various petitions filed herein and find that they do not warrant the relief requested.

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[16] The bonding requirements imposed by our regulation are such as to insure that the tour price will be refunded to the purchaser in the event of nonperformance.

(12105, 12106)

ACCORDINGLY, IT IS ORDERED:

1. That there be and hereby are adopted and issued concurrently herewith amendments to Parts 208 and 378 of the Board's Regulations, to be effective on May 13, 1966.

2. That the portion of the record in the *Reopened Transatlantic Charter Investigation,* Docket 11908 *et al.,* relating to ONA's fitness, be and it hereby is consolidated into and made a part of the record in the *Reopened Supplemental Air Service Proceeding,* Docket 13795 *et al.*

3. That the motion of the Joint Interveners for a stay of the effectiveness of Order E-23350, dated March 11, 1966, be and it hereby is denied.

4. That final action on AAXICO's application in this proceeding be and it hereby is deferred until further order of the Board.

12106

5. That, except to the extent indicated herein, all motions and all petitions for reconsideration and other relief filed herein be and they hereby are denied.

Chairman MURPHY, Vice Chairman MURPHY and Member MINETTI, concurred in the above opinion and order, with the Chairman filing the attached statement. Member GILLILLAND filed the attached concurrence and dissent. Member ADAMS did not participate, filing the attached statement of reasons therefor.

HAROLD R. SANDERSON
Secretary

(SEAL)

(12107, 12108)

12107

MURPHY, Chairman, Concurring:

I join with the other Members of the Board in rejecting the argument that a majority of a quorum of three cannot make final and binding determinations. Nevertheless, in view of the claim made by the joint intervenors that the Board's determination on inclusive tours failed for want of the affirmative vote of a majority of the Board, and in order to avoid any possible question as to the validity of the Board's decision in this regard, I have determined to participate. On the basis of the record in this proceeding, I have concluded that the decisions of the majority on the issues, together with the supporting reasons, are sound. I therefore concur in the findings and conclusions made in the opinion annexed to Order E-23350, March 11, 1966, and join in the instant opinion and order on reconsideration.

/s/ CHARLES S. MURPHY

12108

GILLILLAND, Member, Concurring and Dissenting:

I would grant the petitions insofar as they request reconsideration of the Board's holding that statutory authority exists permitting all-expense tour charters. The dissent attached to Order E-23350, March 11, 1966, clearly shows that the decision is contrary to law and policy. Further, the petitions that request changes in Part 378 should be granted. Such changes would maintain the integrity of the group concept, minimize diversion from the scheduled carriers, and tend to prevent all-expense tour

charters from becoming individually ticketed, cutrate, scheduled service.

/s/ WHITNEY GILLILLAND

12109

STATEMENT OF MEMBER ADAMS:

In my judgment, the contention that three Members must concur as a prerequisite to valid Board action lacks merit. However, under the circumstances I deem it appropriate to set forth briefly the reasons for my non-participation.

During 1961 and early 1962, while I was serving as Director of the Board's Bureau of Enforcement, I supervised a series of investigations of each of the supplemental air carriers. One of the purposes of these investigations was to develop information bearing upon compliance disposition for possible use in proceedings for operating authority under any new statute which might be enacted.

One of the issues in the present case is whether the applicants are "fit" and this includes the issue of compliance disposition. In point of fact, little or no evidence with respect to compliance disposition was introduced in the instant case, and none of the parties opposing certification did so on compliance grounds. Nevertheless, under the foregoing circumstances, whether or not as a technical matter I may be disqualified, I elect not to participate in the proceedings.

/s/ JOHN G. ADAMS

(12110)

12110

Regulation No. ER-462

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Economic Regulations
Amendment No. 1 to Revised
Part 208
Effective: May 13, 1966
Adopted: April 29, 1966

PART 208—TERMS, CONDITIONS AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN SUPPLEMENTAL AIR TRANSPORTATION

AMENDMENTS ADOPTED ON RECONSIDERATION

By Order E-23350, adopted March 11, 1966, in the *Supplemental Air Service Proceeding,* Docket 13795 *et al.,* the Board adopted and issued concurrently therewith Revised Part 208 of the Board's Economic Regulations,[1] which contains all the regulatory provisions pertaining to the domestic charter operations of the supplemental air carriers certificated under section 401 of the Federal Aviation Act, except those rules applicable to inclusive tour charters.[2]

[1] Regulation No. ER-454.

[2] Inclusive tour charters are governed by Part 378 of the Board's Special Regulations.

In its opinion on reconsideration in the *Supplemental* proceeding,[3] the Board has determined, for the reasons set forth therein, to amend Revised Part 208 in a number of respects. The discussion of these amendments, which normally accompanies the amended rule, is contained in the aforesaid opinion.[4]

12111

For the reasons set forth in Regulation ER-454, the Board finds that further notice and public procedure hereon are unnecessary and not in the public interest. Accordingly, the Board hereby amends Revised Part 208 of its Economic Regulations (14 CFR Part 208), effective May 13, 1966, in the following respects:

1. By deleting §§208.204, 208.216 and 208.303 from the Table of Contents and revising certain titles of the remainder thereof to read as follows, and by adding new section 208.103:

Sec.

* * * * *

208.34 Record retention.

* * * * *

208.103 Tariffs and terms of service.

* * * * *

208.301 Tariffs and terms of service.
208.302 Commissions paid to travel agents.

* * * * *

2. By revising §208.3a to read as follows:

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[3] Order E-23600, adopted on April 29, 1966.

[4] *Id.*, pp. 6-8.

(12111, 12112)

§208.3a *Waiver.*

A waiver of any of the provisions of this part may be granted by the Board upon the submission by an air carrier of a written request therefor not less than 30 days prior to the flight to which it relates provided such a waiver is in the public interest and it appears to the Board that special or unusual circumstances warrant a departure from the provisions set forth herein. Notwithstanding the foregoing, waiver applications filed less than 30 days prior

12112

to a flight may be accepted by the Board in emergency situations in which the circumstances warranting a waiver did not exist 30 days before the flight.

3. By deleting §208.34(a) so that §208.34 reads as follows:

§208.34 *Record retention.*

Each carrier operating pursuant to this part shall comply with the applicable record-retention provisions of Part 249 of this subchapter, as amended.

4. By revising §208.35(c) to read as follows:

§208.35 *Payments, gratuities and donations.*

• • • • •

(c) Nothing in this section shall preclude a carrier from paying a commission (within the limits of §§208.202 and 208.302) to a member of a chartering organization if such member is its agent, or restrict a carrier or a travel agent from offering to each member of the charter group such

advertising and good will items as are customarily extended to individually ticketed passengers (e.g., canvas traveling bag or a money exchange computer).

5. By adding new §208.103 which reads as follows:

§208.103 *Tariffs and terms of service.*

The provisions of §208.32 shall apply to charters under this subpart except that paragraphs (e) and (f) and the second sentence of paragraph (b) of such section shall not be applicable.

6. By revising §208.201 to read as follows:

§208.201 *Pretrip notification.*

12113

Upon a charter flight date being reserved by the carrier or its agent, the carrier shall provide the prospective charterer with a copy of this Part 208.[5] The charter contract shall include a provision that the charterer, and any agent thereof, shall only act with regard to the charter in a manner consistent with this part and that the charterer shall within due time submit to the carrier such information as specified in §208.215.

7. By deleting §208.204.

8. By deleting §208.214(b) so that §208.214 reads as follows:

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[5] Copies of this part are available by purchase from the Superintendent of Documents, Washington, D. C. 20402. Single copies will be furnished without charge on written request to the Publications Section, Civil Aeronautics Board, Washington, D. C. 20428.

(12113, 12114)

§208.214 *Statements of charges.*

Any announcements or statements by the charterer to prospective charter participants of the anticipated individual charge for the charter shall clearly identify the portion of the charges to be paid separately for air transportation, for the land tour, and for the administrative expenses of the charterer.

9. By revising §208.215 to read as follows:

§208.215 *Passenger manifests.*

Prior to each one-way or round-trip flight a manifest shall be filed by the charterer with the air carrier showing the names and addresses of persons to be transported in interstate or overseas air transportation.

12114

10. By deleting §208.216.

11. By revising §208.301 to read as follows:

§208.301 *Tariffs and terms of service.*

The provisions of §208.32 shall apply to charters under this subpart except that paragraphs (e) and (f) and the second sentence of paragraph (b) of such section shall not be so applicable.

12. By deleting §208.302 and redesignating §208.303 (Commissions paid to travel agents) as §20[illegible].302.

13. By deleting the forms (Statement of Supporting Information and Post Flight Report) attached to the regulation.

(Sections 204(a), 72 Stat. 743; 49 U.S.C. 1324. Interpret or apply secs. 401(d)(3), 401(n), 407 and 417 of the Federal Aviation Act of 1958, as amended; 76 Stat. 143; 49 U.S.C. 1371(d)(3); 76 Stat. 144; 49 U.S.C. 1371(n); 72 Stat. 766; 49 U.S.C. 1377; 76 Stat. 145; 49 U.S.C. 1387; and sec. 7 of Public Law 87-528, 76 Stat. 146.)

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

NOTE: This is Amendment No. 1 to Part 208 effective May 13, 1966.

(12115)

12115

Regulation No. SPR-15

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Special Regulations
Amendment No. 1 to Part 378
Effective: May 13, 1966
Adopted: April 29, 1966

PART 378—INCLUSIVE TOURS BY SUPPLEMENTAL AIR CARRIERS AND TOUR OPERATORS

AMENDMENTS ADOPTED ON RECONSIDERATION

By Order E-23350, adopted March 11, 1966, in the *Supplemental Air Service Proceeding*, Docket 13795 *et al.*, the Board adopted and issued concurrently therewith new Part 378 of the Board's Special Regulations,[1] which contains the provisions governing the operation of inclusive tour charters. In its order on reconsideration in the *Supplemental* proceeding,[2] the Board determined, *inter alia*, to amend Part 378 so as to delete any verification requirements imposed therein. This action was prompted by the belief that such requirements are unnecessary in view of 18 U.S.C. 1001, which imposes criminal punishment for false state-

[1] Regulation SPR-14.

[2] Order No. E-23600, adopted on April 29, 1966.

ments made in documents such as those required under Part 378. The Board also decided on reconsideration to amend §378.2(d) so as to preclude *all* direct air carriers, rather than supplementals alone, from acting as tour operators.

For the reasons set forth in Regulation SPR-14, the Board finds that further notice and public procedure hereon are unnecessary and not in the public interest. Ac-

12116

cordingly, the Board hereby amends Part 378 of its Special Regulations (14 CFR Part 378), effective May 13, 1966, in the following respects:

1. By revising §378.2(d) to read as follows:

§378.2 *Definitions.*

* * * * *

(d) "Tour operator" means any person (other than a direct air carrier) authorized hereunder to engage in the formation of groups for transportation on inclusive tours.

2. By revising §378.11(b) to read as follows:

§378.11 *Procedure for obtaining a Statement of Authorization.*

* * * * *

(b) The application shall be signed by a duly authorized officer of both the supplemental air carrier and the tour operator and shall include the Statement of Tour Operator's Qualifications and the Tour Prospectus.[3] In

[3] Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willingly

(12116, 12117)

the event of any change in the facts as reflected in the application, an amended application shall be filed no later than five (5) days following such change.

12117

3. By revising §378.12 to read as follows:

§378.12 *Statement of Tour Operator's Qualifications.*

The Statement of Tour Operator's Qualifications shall be in the form set forth in the Appendix. A tour operator who has filed a Statement of Tour Operator's Qualifications in connection with one application may, with respect to subsequent applications, file a statement to the effect that the facts contained in his previously filed Statement of Qualifications have not changed, except as set forth in the later statement.

4. By revising §378.18(a) to read as follows:

§378.18 *Procedure applicable to periods on or after January 1, 1968.*

(a) No inclusive tour or series of tours scheduled to commence on or after January 1, 1968, shall be operated, nor shall any tour operator sell or offer to sell, solicit or advertise such tour or tours, unless there is on file with the Board a Tour Prospectus satisfying the requirements

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falsifies, conceals or covers up by any trick, scheme or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both. Title 18, U. S. C., §1001.

of §378.13. If a series of tours is to be operated for one tour operator pursuant to one charter contract, the Prospectus may cover the entire series, provided the elapsed time between the commencement of the first tour and the completion of the last tour shall not be over 180 days. The Tour Prospectus shall be filed at least 60 days before the commencement of the tour or tours. Late filing of the Prospectus will not be permitted except for good cause shown.

5. By revising §378.20(a) to read as follows:

§378.20 *Post tour reporting.*

(a) Within 30 days after completion of a tour or in

the case of a series of tours, the last of the series, the supplemental air carrier and tour operator shall jointly file with the Board (Supplementary Services Division, Bureau of Operating Rights) a post tour report. This report shall indicate whether or not the tours as authorized hereunder were, in fact, performed. To the extent that the operations differed from those authorized under §378.11 or described in the Prospectus filed under §378.18, such differences shall be fully detailed including the reasons therefor. However, the making of such an explanation shall not of itself operate as authority for or excuse any such deviation.

6. By deleting page 1 of the Appendix (Verification form).

(Sections 101(3), 204(a), 401, 409 and 414 of the Federal Aviation Act of 1958, as amended (72 Stat. 737; 49 U. S. C.

(12118)

1301; 72 Stat. 743; 49 U. S. C. 1324; 72 Stat. 754 as amended by 76 Stat. 143; 49 U. S. C. 1371; 72 Stat. 768; 49 U. S. C. 1379; 72 Stat. 770; 49 U. S. C. 1384) and section 7 of Public Law 87-528 (76 Stat. 146; 49 U. S. C. 1371).)

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

Note: This is Amendment No. 1 to Part 378 effective May 13, 1966.